

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 13, 2001

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The Public Hearing convened in Room 220 South,
441 4th Street, N.W., Washington, D.C. 20001, pursuant to
notice at 9:30 a.m., Robert N. Sockwell, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL	Chairperson
SHEILA CROSS REID	Vice Chairperson
SUSAN HINTON	Board Member
ANNE MOHNKERN RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS	Commissioner
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WASHINGTON, D.C. 20005-3701

(202) 234-4433

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COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA

Beverly Bailey, Office of Zoning

Paul Hart, Office of Zoning

John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Ellen McCarthy, Deputy Director,

Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS	7, 216
 <u>APPLICATION OF KATHERINE C. CANNON:</u>	
16678 ANC-1E	7
 <u>WITNESS</u>	
KATHERINE C. CANNON	8
 <u>APPLICATION OF SQUARE 456 ASSOCIATES:</u>	
16681 ANC-2C	30
NORMAN M. GLASGOW, JR., ESQ.	32
Holland and Knight, LLP	
2100 Pennsylvania Avenue, N.W., Suite 400	
Washington, D.C. 20037	
(202) 955-3000	
 <u>WITNESSES</u>	
ROBERT O. CARR	39, 189
COLDEN FLORANCE	49
JOHN MURPHEY	69
DAVID MAYHOOD	108
STEVEN E. SHER	123
BILL ROBINSON PARKS	165

APPLICATION OF WASHINGTON HEBREW CONGREGATION:

16676 ANC-4A 216

JOHN PATRICK BROWN, JR., ESQ. 217, 228

Greenstein DeLorme & Luchs, P.C.

1620 L Street, N.W., Suite 900

Washington, D.C. 20036-5605

(202) 452-1400, Ext. 367

DAVID W. BROWN, ESQ. 223

Knopf & Brown

1050 17th Street, N.W., Suite 1200

Washington, D.C. 20036

(202) 785-8200

WITNESSES

MARTIN PORETSKY 231

GARY GARCZYNSKI 233

KEN WEST 241

JAMES J. JONES 282

P-R-O-C-E-E-D-I-N-G-S

(9:45 a.m.)

CHAIRPERSON SOCKWELL: The hearing will please come to order.

Good morning, ladies and gentlemen. This is the March 13th, year 2001 public hearing of the D.C. Board of Zoning Adjustment.

My name is Robert N. Sockwell, Chairperson. Joining me today to my right is Sheila Cross Reid, Vice Chair. To my left is Susan Hinton, representing the National Capital Planning Commission, and Anne Renshaw.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exceptions and variances is, one, statement and witnesses of the applicant; two, government reports, including Office of Planning, Department of Public Works, et al.; three, report of the Advisory Neighborhood Commission, the ANC; four, parties or persons in support; five, parties or persons in opposition; and six, closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of each case, except for any materials specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

The Sunshine Act requires that the public hearing on each case be held in the open before the public. The Board may, consistent with its rules of procedure and the Sunshine Act, enter executive session during or after the public hearing on a case for purposes of reviewing the record or deliberating on the case.

The decision of the Board in these contested case must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons not engage the members of the Board in conversation.

Please turn off all beepers and cells phones or set them to vibrate at this time so not to disrupt these proceedings.

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with a case today or if you believe that the Board should not proceed, now is the time to raise such a matter.

Does the staff have any preliminary matters?

MS. BAILEY: No, Mr. Chairman, we do not.

CHAIRPERSON SOCKWELL: If not, then let's proceed with the first case.

MS. BAILEY: Application No. 16678 of Katherine C. Cannon, pursuant to 3104.1, for a special exception under Subsection 223.1, to allow a deck addition and establish a conforming rear yard in an R-4 district at premises 1736 Hobart Street, N.W., Square 2588, Lot 104.

All those wishing to testify, please stand.
Raise your right hand, please, ma'am.

(Whereupon, the witness was duly sworn.)

MS. BAILEY: Thank you. Please sit at the table.

Members of the Board, we do not have an Office of Planning report or an ANC report on this project as of yesterday. The property was posted, and the affidavit of posting properly filed, and the case is ready to go forward, Mr. Chairman.

CHAIRPERSON SOCKWELL: Thank you.

We have some issues to resolve with regard to this. First, there was a memorandum on the case prepared by the Department of Consumer and Regulatory Affairs on which

there were two items for relief requested.

Item number one on the copies that we received here at the Board had been crossed out and marked void. It is our understanding that that voiding was not done by the Zoning Administrator or his staff, but by someone else.

Do you have any information on what happened?

MS. CANNON: No.

CHAIRPERSON SOCKWELL: You'll need to put your microphone on and identify, and since you're the person, just identify yourself for the record and your address.

MS. CANNON: My name is Katherine C. Cannon. I live at 1736 Hobart Street, N.W., in Mount Pleasant.

I've never appeared before the Board of Zoning before. So I apologize for anything I do incorrectly.

But I was absolutely unaware of that zoning adjustment being crossed off, and Ms. Bailey actually brought it to my attention this morning. The letter that I received from the District does show both of those items needed to be addressed today. So I was unaware of that, and I certainly did not do it.

CHAIRPERSON SOCKWELL: Was this package of materials filed directly by you or by an associate with whom you may have contracted for services?

MS. CANNON: It was filed by the gentleman who did the structural plans for me.

CHAIRPERSON SOCKWELL: And that person is?

MS. CANNON: James Killette.

CHAIRPERSON SOCKWELL: Mr. Killette has appeared before the Board previously. I am somewhat disappointed that he may or someone on his staff, if he has one, may have altered an official District of Columbia government document.

It would appear that I believe there may have been a problem with the advertising on this project; is that correct? It was advertised. In fact, staff can fill us in on that.

MS. BAILEY: Mr. Chairman, it was advertised under Subsection 223.1, but based on the Zoning Administrator's referral, another section should be added, and that is 2001.3, and that would be an area variance, whereas it was only advertised for special exception.

CHAIRPERSON SOCKWELL: And the reason for the misadvertising was the fact that the document was read as having had the Item 1 dismissed, believing it was done by the Zoning Office of DCRA.

MS. BAILEY: Absolutely, absolutely.

MS. CANNON: Can I speak?

CHAIRPERSON SOCKWELL: Yes, you may.

MS. CANNON: Do you mind?

The letter I got from Michael D. Johnson, Zoning Administrator, on October 13th doesn't have "void" across --

CHAIRPERSON SOCKWELL: Yes, and that's the question because the documents for referral to the Board are issued directly to the applicant or, in this case, from your building permit process you are sent to Zoning. That document does not come directly to us. So once it goes to you, if anything had been altered it would have come to us only in the altered condition. That's a problem that the Board has discussed --

MS. CANNON: I see.

CHAIRPERSON SOCKWELL: -- as being a consideration for future filings.

But what has happened is that someone has altered a document that was, when issued, an official document. You had no hand in that. You didn't know, and by the time it got to us crossed out, we assumed that it had been done at the originator's -- by the originator's hand and not by an intermediate party.

So our office did what we would normally do, which is advertise for what we believe to be the correct relief.

The issue of variances versus special exceptions is that the proof required for a variance is more difficult to achieve. A special exception deals with practical difficulties and the issue of negative impacts, but a variance requires a more descriptive three-point response for approval.

MEMBER HINTON: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes, go ahead.

MEMBER HINTON: I think that I heard Ms. Cannon say that because she had the original memo from the Zoning Administrator, she is fully prepared to address both the special exception and the variance.

CHAIRPERSON SOCKWELL: Well, what I would suggest that you do is submit a copy of the original, but the problem that we have is that it was not advertised for a variance, and when it's not --

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

MEMBER RENSHAW: I wanted to ask the applicant what was on the sign. Were both regulations posted on the sign or was only one?

MS. CANNON: I don't know.

SECRETARY PRUITT: Mr. Chair, I can respond to that.

CHAIRPERSON SOCKWELL: Yes.

SECRETARY PRUITT: It would only be the one because our office fills it out. So it would be filled out based on our public hearing notice.

But I did talk to Mr. Kettle yesterday to sort of try to understand who cross -- voided the information and told him that he would have to probably be prepared to handle that

today if the case goes forward, the special exception and a variance, and that he should prepare testimony for both.

I'm sorry. I don't know if he informed you on that.

MS. CANNON: No, I have not spoken to him probably since the year 2000. I haven't spoken to him this year.

CHAIRPERSON SOCKWELL: Ms. Cannon, one of the problems that we have as well is that the drawings that were supplied to us have some deficiencies, and I'm not sure that you can address those not having been the preparer, and one of the issues is that there are no dimensions to show the height of the deck above grade and the height of the railing above the deck.

The deck drawings that we have are stated to be at a quarter of an inch equals a foot scale. Part of the drawing is to that scale, but the elevation drawing actually is drawn to show only eight feet of the deck and not the full extent of the deck, but is intended to show the entire deck.

So, in other words, the depth of the deck into your rear yard is misrepresented on a drawing that is claimed to be a scaled drawing, where other dimensions on the drawing that have been shown are correct. So --

MS. CANNON: So there's three --

CHAIRPERSON SOCKWELL: So the drawing is

misleading.

MS. CANNON: Okay.

MEMBER HINTON: Can we ask if you have any information about that? Did you look at these drawings after they were prepared?

MS. CANNON: I did look at them, but you know, not closely and definitely not an architect. So --

CHAIRPERSON SOCKWELL: Yeah, I was going to say.

MS. CANNON: -- I don't understand.

MEMBER HINTON: Was there ever a plan or consideration to build a smaller deck and then it was changed to a larger one? Could this have been an older drawing?

MS. CANNON: I don't think so. So it's going out eight feet right now and not 14 feet?

CHAIRPERSON SOCKWELL: Yeah. It's actually drawn as an eight foot deck, but your request is for a 14 foot deep deck, and because the heights are not shown, there is an indication that there had been dimensions at one time that were taken off.

So we don't have enough information to process this, and there's no one who can express to us what these heights are. We would prefer to have the individual who draws to be present if the drawings themselves are not fully self-explanatory.

VICE CHAIRPERSON REID: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes, please.

VICE CHAIRPERSON REID: It would appear to me that given that there have been several inconsistencies here with this application, as it pertains to the order from the Zoning Administrator, as well as the depiction of the drawings being incorrect, it appears to me that the architect who had that responsibility should have made sure that whatever -- I mean, I can't imagine him submitting old drawings because the application has to be consistent with what is actually there, what actually he plans to do, and as such, it's just irresponsible for this application to be before us with so many inconsistencies.

It's really -- and it has not been properly advertised. So it's in the position of not being able to really perform our duties because we don't have what we need in order to be able to do so.

CHAIRPERSON SOCKWELL: I agree with you, Madame Vice Chair. The fortunate situation, at least what gives me some confidence in the applicant herself, is that her copy of the zoning document was not altered, which means that the other individual in this process did not even inform her of his changes.

MS. CANNON: That's assuming he made the changes.

CHAIRPERSON SOCKWELL: Well, assuming that the changes were made by the individual who submitted the

application.

MS. CANNON: Right.

CHAIRPERSON SOCKWELL: And the application was submitted by Mr. Killette. From what you stated, he has submitted a copy of a document that's different from the one that you have, and you are the owner.

MEMBER RENSHAW: Mr. Sockwell.

CHAIRPERSON SOCKWELL: And that concerns me.

Yes.

MEMBER RENSHAW: I would just like to say that in discussion that the Board has been informed that the contractor voided number one based on somebody's advice at the counter. So "at the counter" meaning here --

CHAIRPERSON SOCKWELL: Our counter?

MEMBER RENSHAW: -- in the office.

CHAIRPERSON SOCKWELL: Well, that makes a difference.

MS. SANSONE: Mr. Chairman, there's an additional problem that we haven't dealt with yet, and that is the Zoning Administrator's computation sheet shows that with the addition, the property will have a lot occupancy of 85 percent.

CHAIRPERSON SOCKWELL: Which is really 100, is it not?

MS. SANSONE: Well, regardless, under Section 223 of the zoning regulations, special exception relief is only

available if the dwelling plus the addition have a lot occupancy under 70 percent.

So this application would not qualify for special exception relief in any event. The applicant would need a variance from the lot occupancy requirement, which is a maximum lot occupancy of 60 percent, and then a variance from the rear yard requirement which is a minimum depth of 20 feet in the R-4 district.

So that is yet another problem with this application.

CHAIRPERSON SOCKWELL: The drawing as it appears of the plat -- the plat itself appears to show a much higher lot coverage than 85 percent.

MS. CANNON: Right. My home, which was built in 1936, to my understanding currently consumes 85 percent of the land lot. So the house right from the beginning far exceeds the minimum requirement, and I do have neighbors who do have decks that go all the way to the alleyway. So it's common, very common on my street for the houses to pretty much comprise the whole lot.

And I've got --

CHAIRPERSON SOCKWELL: For the houses?

MS. CANNON: Houses with a deck. I also have pictures.

CHAIRPERSON SOCKWELL: I don't really wish -- at

the moment I won't get into the merits of the case because we haven't decided to hear it at this point. What we're trying to decide is whether or not the issues that exist with regard to the application's format and the relief requested are significant to the extent that we should send this back for readvertisement, et cetera.

And I believe that because the special exception has gone away and that Section 223 requirements do not apply, that this application needs to be returned for the proper relief request, readvertisement, and a new hearing date.

MS. CANNON: Can I ask when that hearing date will be? Because I first submitted in July, and I'm finally coming to the Board March 13th. So I hope it's going to be less than a nine month turnaround time.

CHAIRPERSON SOCKWELL: Well, I don't know. Staff would be able to give you a general time frame because all of the process would have to be started over again. But the problem is that there were other individuals involved and perhaps including some here at the BZA with regard to why this occurred, why some of it occurred. Some of it is the responsibility of your architect or contractor. Some of it is our responsibility perhaps.

VICE CHAIRPERSON REID: I don't know, Mr. Chairman, whether or not we can accept the proffer to us that the Zoning Administrator's document was -- was changed

predicated upon advice from someone here. The fact of the matter is if, in fact, that would happen, that Zoning Administrator's document is an official document, and as such, any architect or any other person who is a professional would know that you just can't doctor an official document because that is the basis of which it would be before us.

So I would think that perhaps part of it would be to confer with your architect to make sure that things are done correctly because, again, many of the inconsistencies are as a result of what has been submitted by your architect.

And when you are rescheduled, I would suggest very strongly that you have him appear with you because --

MS. CANNON: Yes.

VICE CHAIRPERSON REID: -- many questions would be directly to him, you know, particularly as it pertains to the drawings.

MS. CANNON: I tried having him here. He never called me back.

VICE CHAIRPERSON REID: Well, now, that then becomes another issue as to whether or not you feel that that is in your best interest to continue along those lines. That is not for us to say, but I would think that when you come before us, you want to be as -- have the best possible chance of your getting what you're requesting, and as such, come as strong -- as strong as you possibly can, that is, with adequate

preparation and witnesses.

MS. CANNON: Yeah. I mean, I do feel like I'm very well prepared right now. I've, you know, spent weeks preparing all of these exhibits and things that I have. So --

MS. SANSONE: Mr. Chairman, I would just note that while the application was signed on July 13th of the year 2000, it was not actually filed with the BZA until November 30th. That's indicated on the date stamp of the application.

CHAIRPERSON SOCKWELL: The drawings that you have, Ms. Cannon, are not sufficient for us to review your application as well, and you are not an architect as you stated. So you can't tell us what the dimensions are, with the exception of the 14 foot dimension that we know is way off. You can't tell us the heights in an accurate way that we can know, and I think that this application needs to go back, needs to be reconstituted, readvertised, and rescheduled, reposted.

MS. CANNON: Okay.

CHAIRPERSON SOCKWELL: And those are the unfortunate aspects of perhaps having had bad services from someone outside of yourself and not being aware, but we would request that you meet with staff so that you know exactly what should be done.

MS. CANNON: Okay.

CHAIRPERSON SOCKWELL: And you said your contractor -- it's been asserted that the contractor came with

the drawings? Now, is Mr. Killette the contractor?

MS. CANNON: He's the person who wrote the structural drawings. He made the structural drawings. So --

CHAIRPERSON SOCKWELL: Okay. Whoever submitted it made a mistake, and the drawings do not represent the property, the proposed deck, correctly.

MS. CANNON: So it needs to show the height, the height of the railing, as well as the --

CHAIRPERSON SOCKWELL: Be drawing correctly to show the full extent of what you're requesting.

MEMBER RENSHAW: And also, Mr. Chairman, I did not see in the file any letters of support from your next door neighbors.

MS. CANNON: I have those here.

MEMBER RENSHAW: Okay, and if those could -- well, however we decide is going forward, it should be submitted at that time.

CHAIRPERSON SOCKWELL: I would recommend that we send this back to be readvertised, to have the proper relief requested provided, and that we be sort of started from scratch because there are too many problems for us to be able to get over one and then go to the next and say, "Okay. We can do this."

And I think it might be to your advantage to be able to rethink this during that time period.

MS. CANNON: Okay. That's fine, but I do hope it's not going to be a nine-month turnaround time.

VICE CHAIRPERSON REID: Well, we can give you a date today.

MS. CANNON: Okay. That would be great.

VICE CHAIRPERSON REID: Can't we?

MR. HART: Yes, we can. We can.

MEMBER RENSHAW: And, Mr. Chairman, would the applicant's \$250 application fee then be rolled over to her new application?

CHAIRPERSON SOCKWELL: I believe so. Would it or would it not?

SECRETARY PRUITT: It would not even get a new case number.

CHAIRPERSON SOCKWELL: Yeah, that's what I thought.

SECRETARY PRUITT: It would just continue.

CHAIRPERSON SOCKWELL: We're not denying the case. We're just continuing it per se.

MS. CANNON: Can I just use all of these exhibits that I have for --

CHAIRPERSON SOCKWELL: Yeah. The letters and supporting documents are fine.

MS. CANNON: Okay.

CHAIRPERSON SOCKWELL: The drawings are not fine.

MS. CANNON: Okay.

CHAIRPERSON SOCKWELL: And if there are any other photographs that you wish to submit, you might want to consider those as well.

MS. CANNON: Okay. So I'll make copies of all the letters and put in my file now.

CHAIRPERSON SOCKWELL: Un-huh.

VICE CHAIRPERSON REID: Question. Do we need to get another letter from the Zoning Administrator citing the absolutely correct --

MS. CANNON: I think so. Well, she has an undamaged copy of that letter.

Do you have the original?

MS. CANNON: It's a copy. I might have the original at home, but what I have here is a copy.

CHAIRPERSON SOCKWELL: If you have the original, then we wouldn't -- well, we've still got to go back because all of the relief requests are wrong. Yeah, it's still got to come back.

MS. SANSONE: There were three variances that were never noted on that original letter.

VICE CHAIRPERSON REID: That's what I was thinking.

CHAIRPERSON SOCKWELL: Yeah, it's got to go.

VICE CHAIRPERSON REID: But let's go back to the

Zoning Administrator and get him to make whatever changes are necessary and then have him to submit it to us that reflects accurately that what relief is actually needed.

MEMBER RENSHAW: Mr. Chairman, how fast can we schedule the applicant again? A date certain, Ms. Pruitt?

SECRETARY PRUITT: If you're getting another letter from Mr. Toye Bellow -- excuse me -- it's going to be dependent on his work load and how quickly he can get it to us.

We had picked a date of May 29th as the first time it could go in. That's without sending it to Mr. Bellow, you know, for a new letter.

VICE CHAIRPERSON REID: Can we ask that it be expedited?

SECRETARY PRUITT: Oh, we certainly will do so. I mean, it's just that --

VICE CHAIRPERSON REID: Do you think that's enough time?

SECRETARY PRUITT: I hope so.

MEMBER HINTON: Ms. Pruitt, can we send a letter noting all of the relief that we believe is required based on the drawings that we've seen? And that might expedite the review.

SECRETARY PRUITT: And ask him to concur or something of that nature as opposed to have to drafting?

MEMBER HINTON: Right.

SECRETARY PRUITT: Certainly.

MEMBER HINTON: Thank you.

SECRETARY PRUITT: So we'll work very hard to make them on May 29th.

MEMBER HINTON: I think Ms. Sansone has a list of everything that we've determined so far.

VICE CHAIRPERSON REID: So you're saying May 29th?

MS. SANSONE: Yes, I do.

SECRETARY PRUITT: Correct, in the afternoon.

MS. CANNON: I might be on vacation, but I'll have to check.

CHAIRPERSON SOCKWELL: Will you be able to let staff know by tomorrow what your vacation schedule is if you're pretty sure of it?

MS. CANNON: Is Memorial Day the 26th?

CHAIRPERSON SOCKWELL: Probably.

MS. CANNON: Then I will just be back. I'll be back on the 27th. So I should --

VICE CHAIRPERSON REID: Do we have a calendar?

MEMBER HINTON: We can move it a week later if that would be better.

MS. CANNON: It might be.

CHAIRPERSON SOCKWELL: Can we move it further out?

MEMBER HINTON: One week?

CHAIRPERSON SOCKWELL: One week?

MS. CANNON: Thank you.

CHAIRPERSON SOCKWELL: You may find this a relief from vacation.

MR. HART: Mr. Chair.

CHAIRPERSON SOCKWELL: Yes.

MR. HART: I'm suggesting, based on the discussion, that we move it to June the 12th instead of May 29th.

MS. CANNON: Okay.

CHAIRPERSON SOCKWELL: That's fine.

MR. HART: Because the next date after May 29th is a meeting date, and myself and Ms. Pruitt, we do have some concerns about how tight it might be to get it done by the 29th, readvertising and getting the Zoning Administrator to get involved. June the 12th seems a much more reasonable and workable date.

Is that all right?

MS. CANNON: Yeah.

MR. HART: All right.

CHAIRPERSON SOCKWELL: All right, and you know all of the things that you need to do?

MS. CANNON: I think so.

CHAIRPERSON SOCKWELL: Okay.

MS. CANNON: Will I get a letter instructing me?

CHAIRPERSON SOCKWELL: I think that you might wish to meet with staff to discuss any questions that you have. You wouldn't get an official letter I don't think from us.

MEMBER RENSHAW: Could the applicant get a copy of the letter that is going to be sent to Toye Bellow, which would list the proper filings?

CHAIRPERSON SOCKWELL: Un-huh.

MS. CANNON: That would be a help.

VICE CHAIRPERSON REID: I don't know if that would be the best thing to do, given the fact that we're not really sure what his rendering is going to be. So wouldn't it be better to have the official letter that comes from him after he's reviewed everything so that she won't be --

MEMBER RENSHAW: Well, she'll have both because I assume that Mr. Bellow would also send a copy of his letter to the Board also to the applicant.

CHAIRPERSON SOCKWELL: Yes. I mean, the important thing is that you're going to -- what you get from Mr. Bellow is going to be what you would go by. I mean, your general preparation is going to be pretty much what you've already planned, but you will be planning on a different set of bases.

MS. CANNON: Okay.

CHAIRPERSON SOCKWELL: So talking with staff,

anything that is on our side you can understand, but you will need that information to understand what you're going to be requesting relief from from Mr. Bellow at the Zoning Office at DCRA.

MS. CANNON: Okay.

CHAIRPERSON SOCKWELL: All right?

MS. CANNON: Yeah.

CHAIRPERSON SOCKWELL: Okay. All right. Thank you very much and good luck.

MS. CANNON: Thank you.

CHAIRPERSON SOCKWELL: Please call the next case, and we would like to welcome Mr. John Parsons representing the National Park Service -- the Zoning Commission. Excuse me. Pardon me.

VICE CHAIRPERSON REID: Today, today.

CHAIRPERSON SOCKWELL: Today.

(Laughter.)

MS. BAILEY: The next case of the morning is Application No. 16681 of Square 54 (sic) Associates, pursuant to 11 DCMR 3104.1, for a special exception under Subsection 411.11, to allow a roof structure not meeting the enclosure provision of Section 411.2 (sic), the equal wall height provision, 411.5, and setback provision 770.6(b), and variances under Subsection 3103.2 and 776 from the court area provisions, and Subsection 773, residential recreation space provisions, to

allow the construction of a ten-story apartment house with ground floor arts and retail in the DD/C-4 district at premises 501 through 507 Seventh Street, N.W., Square 456, Lots 37 and 39.

All those wishing to testify, please stand.
Please raise your right hand.

(Whereupon, the witnesses were duly sworn.)

MS. BAILEY: Thank you.

Mr. Chairman, just a couple of very brief notes.

The applicant has indicated that zoning relief is no longer required or needed from Section 411.5.

The Office of Planning does recommend conditional approval of the application.

We did not receive an ANC report as of yesterday.

That's ANC-2C, and the property was properly posted and the affidavit timely filed.

The case is ready to go forward, Mr. Chairman.

CHAIRPERSON SOCKWELL: Thank you.

You may begin.

MR. GLASGOW: All right. Thank you.

MEMBER HINTON: Mr. Chair, can I make a disclosure first?

CHAIRPERSON SOCKWELL: Yes, please.

MEMBER HINTON: As an employee at the National Capital Planning Commission, I have been in meetings where this

project was discussed, that is, the project of Square 456, not the zoning relief that is in front of us today. There were numbers of meetings where it was discussed, and I can't even tell you everything that was said because I wasn't the project officer. I didn't know all of the details of the project, but I wanted it to be clear to everyone.

I don't believe that it will in any way influence a decision I would make today, but if the applicants are not comfortable with that, now would be the time for them to say so.

MR. GLASGOW: No comment on that. That's fine.

MEMBER HINTON: Thanks.

CHAIRPERSON SOCKWELL: Board members?

MEMBER RENSHAW: That's fine.

CHAIRPERSON SOCKWELL: Okay. Please go forward.

MR. GLASGOW: All right. Thank you, Mr. Chairman.

Good morning, Mr. Chairman and members of the Board.

For the record, my name is Norman M. Glasgow, Jr. of the law firm of Holland and Knight, LLP, representing the applicant in the above-referenced case.

Here with me today are Ms. Carolyn Brown of the same firm; Mr. Robert Carr and Judy Renfrew of Carr America, who are the developers of the project. Mr. Carr is an expert

in real estate development.

Mr. Cope (phonetic) Florance and John Murphey of Smith Group Architects; Mr. Florance has previously been accepted as an expert by this panel.

Mr. David Mayhood of the Mayhood Companies, who has been accepted as an expert previously before this Board on residential development and its feasibility and the marketing of residential units.

And Mr. Steven E. Sher, land planner with the firm of Holland and Knight, LLP.

As I stated previously, I believe all of these witnesses have been accepted as experts in their respective fields before this Board on many occasions, and I submit them as experts in this case.

Before proceeding with the testimony of the witnesses, the applicant submits that in the course of further refinement of the building, two areas of relief originally advertised are no longer needed.

CHAIRPERSON SOCKWELL: May I interrupt you for a moment?

MR. GLASGOW: Yes.

CHAIRPERSON SOCKWELL: Does any Board member have any concerns about the expert witness status?

MEMBER HINTON: No, Mr. Chair.

MEMBER RENSHAW: No, Mr. Chairman.

CHAIRPERSON SOCKWELL: All right. Please go ahead.

MR. GLASGOW: Thank you.

Their refinement of the building, two areas of relief are no longer needed, namely, there is now one roof structure on the site, and that roof structure is of equal height. It was advertised for having two roof structures, and the roof structures were of unequal height. Now they are of equal height, and they have been joined. And that will be shown in a set of drawings that are going to be here shortly.

If I can ask Mr. Murphey.

All right, and those will be shown on Sheet 8.28 of the revised plans, which are dated February 28th, 2001, and I do have a set here, and there are additional sets that will be submitted.

CHAIRPERSON SOCKWELL: What's the date that you said?

MR. GLASGOW: It's February 28th.

CHAIRPERSON SOCKWELL: Okay. That's what we have.

MR. GLASGOW: 2001. Those are the plans that were reviewed by the Office of Planning.

If I may approach the chair with a set of the drawings.

SECRETARY PRUITT: Mr. Glasgow, are they the

same? Because if not -- if so, the Board has them.

MR. GLASGOW: I just wanted to --

SECRETARY PRUITT: Right.

CHAIRPERSON SOCKWELL: Yes, we have the 2/28 set.

MR. GLASGOW: The only other change in the plans from those previously submitted is an area of 708 square feet shown for residential recreation space on Sheet 2.0 of the cellar plan. This space was provided after discussions with the Office of Planning.

It's also my understanding that the Board members have a copy of the statement of applicant which was filed February 27th as a part of the record in the case.

CHAIRPERSON SOCKWELL: Mr. Glasgow.

MR. GLASGOW: Yes.

CHAIRPERSON SOCKWELL: On Sheet 8.20, the square footages of the spaces are not indicated. There's no indication on that drawing where the 708 square foot space is.

MR. GLASGOW: That 708 square feet, Mr. Chairman, would be, if I may approach the Chair -- so we're going to have a set that shows that clearly.

CHAIRPERSON SOCKWELL: All right. That space, for the record, on our drawings is shown as tenant storage and a utility room. The utility room apparently would remain.

MR. GLASGOW: Right.

CHAIRPERSON SOCKWELL: And the tenant storage

space would become the residential recreation space.

MR. GLASGOW: That is correct.

(Whereupon, the Board conferred.)

MR. GLASGOW: This space was provided after discussions with the Office of Planning, and this case represents a further refinement to the residential portion of the project which has been approved by this Board on at least three occasions, the most recent of which was this past year.

That was for minor modifications of the order of which this site was a part.

Mr. Florance will discuss those refinements, and we believe that the area's relief requested only serve to make the building and project more desirable.

Proceeding with the statement of applicant, we are requesting special exception relief from roof structure setback requirements so as to permit the relocation of the elevator core so that it can serve both portions of the structure, namely, the nine-story proposed building at the corner of Seventh and E Street and the four-story portion of the structure located on the eastern portion of the lot.

A variance from the residential recreation space requirements with a note that the applicant has now submitted that 708 square feet would be available for residential recreation space. I believe the Office of Planning report references 735 square feet, but it is the same space that we

were talking about.

However, the applicant differs with the Office of Planning condition that after six months, if certain art space is not rented, then additional area would be converted to residential recreation space. We agree with the statement as to the necessity of the variance relief at page 7 of the Office of Planning report, but we do not agree that after six months the rationale suddenly evaporates.

This is a small building, 33 units, and the testimony will be submitted that the residential recreation space is not needed or utilized and that it is an unusual site and building for residential development downtown.

Lastly, the applicant is requesting a variance from the are of closed court requirements of Section 776.4.

In addition, the applicant has not objection to a condition relating to the requirement of the recordation of a combined lot development covenant at page 1 of the Office of Planning report.

Proceeding quickly through the statement of the applicant, the manner in which the applicant meets the burden of proof is set forth at pages 6 through 14. Exhibit A has a Sanborn plat, and the next page shows the tax assessor square maps with the property outline.

Exhibit B is a zoning map of the site showing the property located in the DD/C-4 district.

Exhibit E are photographs of the property and surrounding area.

Exhibit F is the staff report of the Historic Preservation Review Board, which was unanimously adopted by the Review Board at its February 22nd public meeting approving the proposed design as was being submitted to the Board today.

Exhibit G is a 1998 order of the Board relating to the property.

We also believe that the Office of Planning report does set forth a detailed statement as to why the relief should be granted. If there are no preliminary questions, I'd like to proceed with the testimony of the witnesses.

CHAIRPERSON SOCKWELL: Board members?

(No response.)

CHAIRPERSON SOCKWELL: Please go ahead.

MR. GLASGOW: Mr. Florance, would you please identify yourself for the record and proceed with your testimony? I'm sorry. Mr. Carr first.

MR. CARR: Good morning, Mr. Chairman, members of the Board. My name is Robert Carr. I live at 1236 27th Street, N.W. in D.C.

I'm the president of Carr America Urban Development, the successor to the Oliver Carr Company's Washington, D.C. development group. We're the contract purchaser of this site. We expect to close in about two week.

We're buying it from Sam Rose, who bought it last year from the Equitable Life Assurance Society.

The property, as many of you know, has been subject to many prior public review of different kinds. It was approved by the Mayor's agent in 1996 approving a housing and retail development of the scale that we're showing and of essentially the same character, preserving the Murray Building at the order of Seventh and E, the existing four-story building's facades, building a new ten-story tower within it, demolishing a small existing building that was deemed to be noncontributing, and fully preserving two four-story buildings down E Street to the east with a small addition to the rear.

It's also been subject to three prior BZA cases focusing on restructure setbacks and off-site housing contributions. One recently Mr. Glasgow just mentioned, adjusting the Murray Building roof structure in November of last year.

It's also been subject to two recent HPRB cases approving stages of our design as it's really matured, the concept approved by the Mayor's agent.

Our fundamental development approach has been to reuse the essential ingredients of all those prior approvals, particularly the historic preservation and expansion of the Murray Building and the full restoration of the two buildings that used to be called the Insect Club.

We're very excited about the prospect of creating residential and special art spaces at this corner. As Mr. Glasgow mentioned, we plan 33 condominiums and 8,900 square feet of gallery space on the first floor of both building and on the first basement level of the Murray Building.

We think we're going to really bring to life the elements of the comprehensive plan and the downtown development district in this location. It should have a major impact on Seventh Street. It's the only new condominium project we know of for certain in this neighborhood. So we think there's a real pent up demand for ownership opportunity in new housing.

And we also believe it's the only new gallery space being offered at discounts to market.

The last several months have been devoted to our architects and our entire team evolving the design concept from the Mayor's agent posture. Mr. Florance will go over those in more detail, but in terms of the highlights, our biggest single concern has been vertical circulation. The Mayor's agent scheme had one elevator in the middle of the Murray Building and five stairs serving the two historic buildings known as the Insect Club, essentially presenting that as a four-story walk-up.

We've had concerns about how marketable that treatment is and also concerned about how much the five stairs impacted the units inside the Insect Club.

I think the Smith Group has come up with a wonderful proposed solution, essentially taking the Murray Building elevator core and creating in an external tower to the Murray Building, adding a second elevator to it, and providing vertical circulation both to Murray and to the Insect Club, allowing us to develop the Insect Club as flats with elevator service and continuing the elevator service to Murray, with both buildings now enjoying two elevators instead of one.

So it allows us to provide an egress there single in Insect and in Murray, vastly improving the layout inside, and because we're expressing some external residential space, we can build the same 56,000 square feet of residential space required and actually pulling one floor out of Murray.

So the scheme Cope will present to you actually is a nine-story residential scheme instead of ten, the same exact square footage as the Mayor's agent's scheme, but that further allows us to raise the ceiling heights of each unit to a minimum of nine, six, providing much more light and air to really enhance the quality of the residential space, the vistas down Seventh Street and E Street.

So we think that this scheme uniformly creates a dramatic improvement in the space, and there are only three apartments of the 33 that now don't have direct street vistas.

So we feel that it's a much better program, and we're quite excited about it. It was very enthusiastically endorsed by

HPRB last month. So I think they're on board with, I think, an equal improvement in the design itself.

We very much hope that you'll cooperate in the three areas of technical relief that this scheme raised. Again, Mr. Florance will go over that more specifically, but I think you can visualize that the elevator bank now being presented as really an architectural tower sets back from all of the street frontages, but doesn't, in fact, set back from itself.

So this elevator penthouse becomes more of an architectural element and doesn't set back at the upper level from its own presence. So that requires a relief from the elevator setback requirements.

This tower being placed about two-thirds into the interior of this site also now creates a courtyard in back of it. We have used that courtyard, as, again, Cope will display, as effectively two private 15-foot terraces for the apartments that have their living space fronting on the court at the rear of that tower, and while it meets the minimum width requirements, it doesn't meet the minimum area requirements. It's really quite comfortable for the apartments themselves, we believe, but it doesn't technically have the length in addition to width that the regulations require.

The third area of relief, as Mr. Glasgow mentioned was an exception to the or variance from the private

residential recreation space requirement. We're finding that this very small site of under 10,000 feet in a small project that I think is really akin more to the scale of a Dupont Circle renovation or more of a lower density project has a very urban character. It's very difficult to provide outdoor space.

The roofs of both structures are constrained by access by the configuration of the mechanical equipment on top, and we really are putting all of our energies into the quality of the units themselves, feel that they, in fact, will be the main spaces people in this location enjoy, and in fact, the city is at your doorstep, and your recreation space will be at the city at large.

So we feel that we're not able to comply with the full scope of that requirement. However, we have worked hard with others interested in the case. We're very pleased to have had the unanimous support of the ANC in a recent vote, and we talked to the Planning Office about all of the dimensions of the proposal. They recommended very strongly that we do require and provide some recreation space. So we've offered to provide the community room that you saw in those amended drawings right below the lobby in the first basement level.

It does have 12 foot ceilings. We think it is of a fairly generous size that is nearly the same proportions exactly as the lobby above. It's about 708 square feet.

We do have a fundamental concern that it may not

be used heavily, that people may really use their living space or the lobby or the outside more than that community room. So we are concerned about a requirement to increase it, but we're perfectly willing and happy to offer the one the size that has been displayed to you on those drawings.

We otherwise feel that the Office of Planning report very accurately describes our proposal, and we agree with certainly the sense and the characterization of our project.

So unless you have questions, I'll turn it over to the rest of our team to present.

CHAIRPERSON SOCKWELL: Just one question. Is it your belief that galleries and restaurants are supportive of the definition in the zoning ordinance of what residential recreation space is supposed to be?

MR. CARR: I don't think that they meet the exact definition of the requirement, but I do feel that in an urban setting of this type -- and Mr. Mayhood will address this more expertly than me -- I think what people are really looking to acquire is a presence within this neighborhood and this environment, and their life style, in fact, will be going to restaurants or going to museums, which are readily available on this street, across the street with the portrait gallery, Museum of American Art.

CHAIRPERSON SOCKWELL: And I understand -- excuse

me -- I understand what you're saying, but I believe that the question was whether or not you believe that galleries and restaurants met the zoning definition of residential recreation space, not neighborhood amenities.

MR. CARR: We're not presuming that it meets the technical requirement. We do feel the community room does, but no other space specifically delivered within our project meets that definition as it is proposed today.

MR. GLASGOW: We do believe that, Mr. Chairman, certainly the Board can take cognizance of those special preferred uses that are being put in the building and how they relate to residential use of the building to tie into that.

So while it is not technically within the definition, it is very akin to it, and it is a different type way of addressing that issue.

MR. CARR: I guess another response perhaps could be that we feel we are very much right on target in meeting the fundamental goals embodied in the downtown development district regulations. So for all of the past hearings and discussions about the overlays and the ability to generate new arts and new housing of quality, we're very much committed to doing that and feel that this project embodies those experiences and that potential in a very substantial way.

I guess we have emphasized those fundamental goals perhaps without being able to really meet the perhaps

secondary or perhaps tertiary goals of the recreation space.

And, in fact, we've encountered substantial difficulty in making that happen in the project design, and I think you'll see in the design presentation that if we were to do it more fully, it's really at the expense of these other objectives, and we feel in terms of making a tradeoff it's better to hit the main priority successfully and not injure our ability to do that, to provide the recreation requirement.

MEMBER HINTON: Mr. Chair, could I ask?

Can you give us the numbers that would be required in the -- this is C-4. So you would need five percent. Is that what's required?

MR. CARR: It's a little over 2,800 square feet.

MEMBER HINTON: Twenty-eight hundred, and you're providing 735?

MR. CARR: Seven, oh, three.

MR. GLASGOW: Seven, oh, eight.

MR. CARR: Seven, oh, eight. Excuse me.

CHAIRPERSON SOCKWELL: It's approximately .013.

MEMBER HINTON: What is it?

CHAIRPERSON SOCKWELL: It's approximately .013 as opposed to five percent. If I'm correct, I think Mr. Florance probably knows.

MEMBER HINTON: Twenty-eight hundred square feet would be required?

MR. CARR: Twenty-eight, eighty or something.

MEMBER HINTON: Twenty-eight, eighty.

MR. FLORANCE: And we're providing about a quarter of that.

MEMBER HINTON: Okay. Thank you.

MR. CARR: Any other questions for me?

CHAIRPERSON SOCKWELL: No, that's my questions.

MR. CARR: Okay.

MR. FLORANCE: My name is Colden Florance, and I am an architect with the Smith Group, and my address is 1825 Eye Street, N.W., Washington, D.C.

And I'm very pleased to be here at what I think is the end of a long design trail. I first got involved in this project probably 12 years, something on that order, and others had been working on it a substantial amount of time before that.

We are guilty of coming down here and taking up your time because we have been able to progressively improve the project, and each time we do that, because it is very special and idiosyncratic, historic structures, small site, two different size structures, indeed, three, we have a lot of constraints that don't typically lend themselves to the literal interpretation of the details of the zoning regs.

But anyhow, the big design idea in this change, which is to take the elevator core and the stairs out of the

center of the Murray Building where they used to be in the earlier approved scheme is to provide as much space as possible for actual residential use in the footprint of this building, and at the same time take out a rabbit warren of garden apartment-like stairs that we had previously introduced here and let these become flat.

And there are a lot of complications here because there are different floor levels and so on and so forth, and getting those stairs out immeasurably improves the footprints here. So we did that with a tower, an elevator tower like that.

The second big idea design-wise is to take that tower architecturally --

VICE CHAIRPERSON REID: Sorry. You're going to have to speak into the mic. If you can bring it over here or you can sit there and perhaps there is a light pen that you could use to point and that would be easier for you.

I think, Mr. Sockwell, do you have the light pen?

CHAIRPERSON SOCKWELL: Yes.

MR. FLORANCE: Thank you.

CHAIRPERSON SOCKWELL: You're welcome. I'm going to start charging rent on it.

MR. FLORANCE: Can you see that?

CHAIRPERSON SOCKWELL: Yes.

MR. FLORANCE: Okay. So the second big idea is

to develop a new element, and don't be confused by that anvil there. That anvil belongs to the building on the north, and it's not part of this project.

VICE CHAIRPERSON REID: Oh, okay. Okay.

CHAIRPERSON SOCKWELL: It almost looks like a Chinese element.

MR. FLORANCE: Yes, it does.

Our building then, we have introduced the tower, which we're speaking of and which there are two elevators, and also two stairs serving all of the egress requirements of both buildings, and that is a clean, recessive, very modernist design, glass and metal, which is not in any way in competition with the historic qualities of the two buildings that we were focusing on.

I say two. It's really three: one, two, three.

We're really quite pleased with being able to recess that. As you can see in the model here, from this point on back we have an attractive and amply sized building lobby, and our approach to the entrance to the building is simply to use, again, a simple rectilinear kind of entrance which holds the street front. We think that's important not to have a deep hole, although that's not an unusual historic topology in the City of Washington, but we don't think we want that here.

So that really explains the big idea. Mr. Carr mentioned the fact that in doing this we are able to actually

take one floor out above the Murray Building and have the higher ceilings and our design idea for the units themselves is to have what is called a soft loft, and that means that there will be -- with those kinds of ceiling heights and with this kind of fenestration, we'll have a very attractive unit type, which is akin to what you might find in Soho and Chelsea, that kind of thing.

I'm not going to far as to say that it's truly a New York or Chicago loft, but that's the idea, and maybe Mr. Mayhood can comment a bit further on that.

So what is the relief that we require? I won't describe the general area. You all know where we are on Seventh Street. You know what's going on with Lansburgh's, what's going on with the Tariff Commission. The MCI Arena is there. We're reworking the Smithsonian -- we're not, but it's being reworked -- and so on and so forth. It's a happening place, and this is a part of it, and so we're pleased with that.

The first issue is setbacks for the roof structure. This is 18 foot, six. It should under the regulations set back 18 feet, six from the face of the building.

We can't do that. We can't do that. All we can provide is 15 feet, and I think you'll find that the report thinks that that is fine.

This gets a little more subtle. As this --

MEMBER HINTON: Could you -- I'm sorry -- could you explain why you can't do that?

MR. FLORANCE: It's a question --

MR. GLASGOW: It's just the tower. I think it's just the tower where technically --

MR. FLORANCE: We're only talking about only --

MR. GLASGOW: Only the tower.

MR. FLORANCE: That was approved.

MR. GLASGOW: That was approved, and that remains.

MR. FLORANCE: This is really not before you today. You have approved that setback before, but to answer your question, the mechanical equipment that we need to service the whole building occupies that.

MEMBER HINTON: Okay, and that's not changing.

MR. FLORANCE: That's not changing. That's not before us.

MEMBER HINTON: Okay.

MR. FLORANCE: More subtly, as this tower rises, under the regulations it would have to start to set back at a 45 degree angle. We can't do that, and obviously we want to bring the elevator and the elevator machinery straight up.

We also think this is an important component of the design and that the profile is a major part of the entire

composition. So that is part of the relief we are requesting today.

The courtyard --

MEMBER HINTON: So the relief there is from this set -- because it's not set back?

MR. FLORANCE: It's not set back, in effect, from itself. It's kind of a subtle complex, but to actually literally meet the zoning regulations, at this point it would have to be setting back at a 45 degree angle, which it can't do and introduce an elevator there.

MEMBER HINTON: Okay, and what about the height of it?

MR. FLORANCE: The height here has been approved as an architectural embellishment prior.

CHAIRPERSON SOCKWELL: No.

MEMBER HINTON: No.

MR. FLORANCE: And approved by the HPRB.

MEMBER HINTON: Well, there's a problem with the zoning because the zoning regs., I believe, only allow a penthouse, elevator shafts, things like that to extend up to 18 feet six inches above the roof, and that appears to be more than that because it's higher than the adjacent --

MR. FLORANCE: You're at 18 foot six inches at this point.

MEMBER HINTON: right.

MR. FLORANCE: Okay? What we've done from this point up, and we think it's important to the design, is introduce an architectural embellishment.

CHAIRPERSON SOCKWELL: Mr. Florance, let's talk about architectural embellishments for a moment. Am I to assume correctly that the elevator lobby extension that is accommodated within that tower portion is visible as either a skylighted element or as some raising of the roof or ceiling of the elevator lobby at the top floor.

MR. FLORANCE: The elevator lobby at the top floor.

VICE CHAIRPERSON REID: Need to be speaking into the mic.

MR. FLORANCE: In this location, okay? At the top floor. Above that is the elevator machine.

CHAIRPERSON SOCKWELL: Right.

MR. FLORANCE: Above that is an empty void. See, I've referred to your drawings, and if the roof plan and the floor plans are correct, the element that you are showing us as rising above the rest is over top the lobby and not over top the elevator shafts. So if the sheave beams and all of the --

MR. FLORANCE: It's over top of the lobby.

CHAIRPERSON SOCKWELL: -- elevator equipment is on top of the elevators, what's over top of the lobby?

MR. FLORANCE: It is a void.

CHAIRPERSON SOCKWELL: Right. So the question is: as an architectural embellishment, it is how related -- I mean, it is contiguous with the rest of the structure. It's separated only by a furred ceiling you're saying?

MR. FLORANCE: Basically, yes. Obviously we don't know the details yet, but the top floor elevator lobby would not be open to the full height. But the important point to remember, this is really, we think, an important architectural device.

CHAIRPERSON SOCKWELL: Well --

MR. CARR: The workmanship, the character, the quality of the external materials, the light feeling at night.

CHAIRPERSON SOCKWELL: Well, see, one of the things that the Historic Preservation approval required you to do was to diminish the level of detail in the more modern portion of the facade, and the reason for that was to make it less a competitor to the historic facades that are protected toward the street.

And when you introduce a vertical element, which of course creates a tri-level roof plan as it goes to the east, you are, again, doing the opposite of what appears to be a desire to diminish the impact of the modern structure that looms behind the historic facades and the recreation of a historic facade look in the additional stories that have been added to the Murray Building.

Now, again, architectural embellishments are allowed under the ordinance, but I'm just bringing these things out because those were concerns that I have had, and they have been raised.

MR. GLASGOW: Mr. Sockwell, I think with respect to the approval of the Historic Preservation Review Board, they saw these drawings, this model and specifically approved it and recognized we didn't prepare --

CHAIRPERSON SOCKWELL: But they're not Zoning. That's the difference. They're not Zoning.

MR. GLASGOW: Right.

CHAIRPERSON SOCKWELL: And we are --

MR. GLASGOW: Clearly.

CHAIRPERSON SOCKWELL: -- mutually exclusive.

MR. GLASGOW: Yes, but I wanted to make sure that the Board was aware that the Historic Preservation Review Board in reviewing that particular structure and element was supportive of what had been done and approved and supported that specific element as opposed to having the roof structure be -- well, the roof structure is a continuous height, but not having the architectural embellishment feature. They specifically addressed that at the Review Board and supported it.

MR. FLORANCE: Let me explain this again, and let me --

VICE CHAIRPERSON REID: You need to be on the mic.

MR. FLORANCE: -- talk a little more about the overall urban design implications of that piece in my mind.

CHAIRPERSON SOCKWELL: At that height it should be interesting.

MR. FLORANCE: Okay. Well, to begin with we're on a block. This is part of an historic district, and as you know, Hecht's is on the northern end, and Hecht's is characterized very attractively with that marvelous penthouse that we all know about and resonate to.

CHAIRPERSON SOCKWELL: But they took the water tower off.

MR. FLORANCE: Come on now.

Now, this is the standard regulation height.

MEMBER HINTON: That's the upper maximum allowable height under zoning, right?

MR. FLORANCE: That's correct.

MEMBER HINTON: Okay.

MR. FLORANCE: This is metal paneling, and then you have clear glass in the elevator lobbies to that point. As you come to this point, you have spandrels and you have glass corner looking in that direction, and we feel very strongly from an aesthetic standpoint that this profile is sharply enhanced by letting that rise above. It evokes abstractly the

rise of the penthouse on the Hecht's to the north, and it is a question of a pure sort of architectural composition.

It's purely aesthetic. It is something that is approvable within the zoning regulations. There's language, as we all know about, and I think it starts to become a subjective kind of decision to be made on an aesthetic basis.

And obviously, from our point of view, this is correct.

VICE CHAIRPERSON REID: May I?

MR. FLORANCE: Now, one more point.

CHAIRPERSON SOCKWELL: Let Mr. Florance finish then.

MR. FLORANCE: If I may, is that this material with the vertical stripes that you see here is called a channel glass, and there is actual channels of glass which link together, and they are translucent, and it is our intention then within and behind that glass where it rises above the elevator lobby and at this point to have a very, very soft illumination so that you have this sort of quiet beacon deep in from the street and serving as another piece of urban design, quality, character, and attraction.

When you think of that corner, we've got Jaleo's.

We have the new Kempton Hotel coming on line. We have Square 457, where there will be Woolly Mammoth and apartment structures, Carla Barton's historic location. We think this is

really an important and attractive addition to help make this composition read as a single composition, although it's three buildings. We like that idea. Characteristic of the city and Seventh Street and downtown Washington.

And so we urge that since it is fully permissible, that it be permitted. We've worked on this hard for a long time. We've had a lot of affirmation, confirmation from other experts in the field, HPRB, and so on and so forth.

So I don't know what more to say. I don't see what possible harm this could be doing by rising what is it, John? Eight to ten feet?

MR. MURPHEY: Ten foot, ten above.

MR. FLORANCE: Above the penthouse, inset deeply, never seen really from Seventh Street. It was very hard to see that. I don't want to make that case as an argument for it because I like it and I think it should be seen.

So you had a question?

VICE CHAIRPERSON REID: Now, in my way of thinking, if you have something that is an architectural embellishment or it's being done purely for aesthetics, but you're saying you really can't see it, I'm trying to grapple with what's the point.

MR. FLORANCE: Well, you'll be able to see it certainly from E Street. It will be quite evident from E Street. It will be evident in all probability from the

intersection.

But as you enter this building, you will be aware that it's there. If you're in the apartments across the street, you'll be able to see it. It will be a hallmarker (phonetic), a place marker.

VICE CHAIRPERSON REID: But from the apartments across the street, if you happen to be in the apartments, but like are you saying that from the street itself looking up, if you're on the street in front of it, would it be easily seen?

I mean, I can't -- I just don't see how it's -- how it's really doing that much for the building.

MR. FLORANCE: Well, you can see that here. Also, with this ruler, if you're pointing here, as you stand on the sidewalk in this location across the street, you'll be looking up.

VICE CHAIRPERSON REID: But my point is how much difference does it make to the eye to have that additional space up there? I don't see -- I really don't see how it is that important to the design. That's just personally.

Now, let me also have another question before you answer that question. Another thing that I'm a little confused about is setback of the glass elevator in the building design itself --

MR. FLORANCE: The elevator --

VICE CHAIRPERSON REID: There just seemed to be

such a departure. I know that you said that you already had it approved through Historic Preservation.

MR. FLORANCE: Right.

VICE CHAIRPERSON REID: But it just seemed to be such a departure from what seems to be the integrity of the other buildings in that area. That just seems to be so martinistic to me.

MR. FLORANCE: Well, if you think of the MCI Arena, that's a modernist building, and it fits in by most accounts very well in this part of town.

The idea of it, you won't see it and therefore, it's useless, is hard to accept because you will see it. And what we're trying to do, given this unique opportunity for design, is to maximize the quality of the design.

VICE CHAIRPERSON REID: Okay. Well, that answers my question because you're saying that you see it E Street, but not from Seventh Street --

MR. FLORANCE: Yes.

VICE CHAIRPERSON REID: -- unless you're walking past it or --

MR. FLORANCE: It's hard to say precisely where we're going to be able to see it.

VICE CHAIRPERSON REID: -- from the whole -- from the apartment across the street, but you're saying that from a certain angle --

MR. FLORANCE: As you move around this district, you will be aware of that. Sometimes you'll see it and sometimes you won't, but it will be something that you'll see up there in the evening with people on the sidewalk.

VICE CHAIRPERSON REID: You mean kind of like a landmark or something?

MR. FLORANCE: Yes.

VICE CHAIRPERSON REID: It's lighted at night or

--

MR. FLORANCE: Right.

VICE CHAIRPERSON REID: Okay.

MR. FLORANCE: Exactly.

VICE CHAIRPERSON REID: All right. Well, I'm just trying to --

MR. FLORANCE: A landmark.

VICE CHAIRPERSON REID: I'm just trying to --

MR. FLORANCE: A place maker.

VICE CHAIRPERSON REID: -- feel you out as to what the rationale is, and I'm kind of getting a better understanding of it.

MR. FLORANCE: It's an architectural -- I don't want to use the term embellishment because people don't like that term.

VICE CHAIRPERSON REID: Well --

MR. FLORANCE: And I don't like it either. It

sounds superficial.

VICE CHAIRPERSON REID: Trying to do something unusual, unique down there.

MR. FLORANCE: It's a power piece --

VICE CHAIRPERSON REID: Okay.

MR. FLORANCE: -- of a three-dimensional design composition.

VICE CHAIRPERSON REID: Okay.

MR. FLORANCE: And that's why we are so strongly in favor of it.

Now, going on from that --

MEMBER HINTON: Actually, sorry, but I still have a question about it. Can you explain to me again on that model what is inside that tower at the different levels?

MR. FLORANCE: Yes. Stopping at that level, you have an elevator lobby. People are standing here, waiting for the elevator and looking out over the street.

MEMBER HINTON: Okay.

MR. FLORANCE: In a wonderful, exciting kind of space, and they also will have a view across in that direction.

As you reach this point, it is void, and it is part of the penthouse, and --

MEMBER HINTON: Wait, wait. What do you mean "it is void, and it is part of the penthouse"?

MR. FLORANCE: Well, the elevator machine room is

at that location, okay?

MEMBER HINTON: In the tower?

MR. FLORANCE: In the penthouse.

VICE CHAIRPERSON REID: On the roof.

CHAIRPERSON SOCKWELL: Now, my problem with this is that you are integrating the elevator machine room into your tower over the lobby, which by virtue of the design that I'm looking at should be removed from the elevator machine room and equipment locations.

MR. FLORANCE: What's actually happening --

CHAIRPERSON SOCKWELL: I mean, I know what's at the lower level. I understand that fully.

MR. FLORANCE: And this, again, we haven't yet drawn detailed plans of what's going on at this level, but it simply occupies the area, the footprint above the elevator lobby, as you can see here, and behind it is the elevator machine room, and at this point we have effectively a void.

And then below that level, we have the top floor elevator lobby.

CHAIRPERSON SOCKWELL: So there --

MEMBER HINTON: So there's no floor at that level?

MR. FLORANCE: There is a floor at the roof level, yes. There's a floor at the roof level.

CHAIRPERSON SOCKWELL: There is?

MEMBER HINTON: There's a floor at the roof level.

CHAIRPERSON SOCKWELL: Why? Why is there a floor there?

VICE CHAIRPERSON REID: But you don't exit, it looks like.

MEMBER HINTON: You need to be on a microphone please.

MR. FLORANCE: This is John Murphey.

CHAIRPERSON SOCKWELL: And Mr. Murphey should identify himself.

Have you passed a witness card in?

MR. MURPHEY: NO.

CHAIRPERSON SOCKWELL: Were you sworn in?

MR. MURPHEY: I have not.

CHAIRPERSON SOCKWELL: Please swear Mr. Murphey in.

MS. BAILEY: Sir, raise your right hand.

(Whereupon, the witness was duly sworn.)

MS. BAILEY: Thank you.

CHAIRPERSON SOCKWELL: And your name again? And you can identify yourself in your address.

MR. MURPHEY: My name is John Murphey, and I'm with the Smith Group.

And let me go a little bit further in how we

configured that elevator piece. The very last stop is at the very top floor, and we wanted to have a proper ceiling, as you would expect in any elevator lobby, which would be about nine foot, six. So you wouldn't end up looking at the top of the overrun.

Immediately over that slap, immediately over the rooftop stop begins the void, and that piece is here, this one here, and this one here. Now, that void is in plan that shape, and it goes clear down through the top of the roof.

So it's rectangular in shape, and it goes down to the roof, which is over the last stop.

Now, the elevator overrun and all of the machinery is completely separate from that.

MR. FLORANCE: And behind.

MR. MURPHEY: And behind.

CHAIRPERSON SOCKWELL: Exactly. Where I would expect it to be.

MR. MURPHEY: We didn't want to see that. We didn't care to have anyone see that, and it would drain the aesthetic --

CHAIRPERSON SOCKWELL: Okay. You'll have to be close enough to the microphone that our recorder can hear you.

The question that's being raised is that you have a top story above which there is a ceiling at some height, above which you are saying there is a slab; am I correct?

MR. MURPHEY: The slab is right at the top of the roof.

MR. FLORANCE: The slab occurs here, and that also forms the ceiling of the top floor elevator lobby, and above -- I'm sorry. It occurs here. The roof. Above that it is empty.

CHAIRPERSON SOCKWELL: So you're saying that everything above it, there's no floor anywhere in that element. That element is absolutely non -- with the exception of the proposed lighting.

MR. FLORANCE: Yes, with the exception of that.

CHAIRPERSON SOCKWELL: And you haven't designed the lighting of course because you're some distance away from there.

MR. FLORANCE: Not there.

CHAIRPERSON SOCKWELL: So you are characterizing this as a tower.

MR. FLORANCE: Yes, exactly. And we're making the statement that we think it's important that it be done.

CHAIRPERSON SOCKWELL: Thank you, Mr. Florance.

COMMISSIONER PARSONS: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

COMMISSIONER PARSONS: We're suffering a little bit here from elevations which are the worse way to express anything, and I'm glad Mr. Florance brought the model because I

think the elevation drawing over there on the left easel is unfair to the project. I can't imagine who would ever see it from this perspective other than those who might live directly across the street.

And the setback of this tower I don't think will intrude on this historic district. I am concerned a little bit about the lighting, which is promised to be subtle.

MR. FLORANCE: Subtle.

CHAIRPERSON SOCKWELL: And two stories of approximate height.

COMMISSIONER PARSONS: Correct. We're going through our tower period here in Washington. I guess across the country we are, and some are much better than others.

And I think what we've learned from the World Bank and other locations, that suddenly something appears in the landscape that's unwelcome as seen from someplace we never imagined, such as Pennsylvania Avenue with this looming World Bank landing craft over the White House, if you know what I mean. There's also a couple of towers that seem to beacons in the city that I think are very unwelcome in Franklin Park.

But that's my concern here. Do we have any idea where this might pop up and be unwelcome? I can't think of one, but I thought I'd ask you.

Certainly from the north we're not going to see it. From the Old Soldier's Home or something it's very well

blocked.

MR. FLORANCE: No, you won't be seeing it from the east because of AARP.

COMMISSIONER PARSONS: True.

MR. FLORANCE: And it will be shielded basically by this building.

CHAIRPERSON SOCKWELL: But we don't know what the north face will present as the south wall of the existing Hecht Company might become an element, and as you stated, the penthouse for the Hecht Company building which is there -- now, I'm not sure that the penthouse itself is protected under historic preservation.

MR. FLORANCE: It is. It's the most important thing.

CHAIRPERSON SOCKWELL: It is?

MR. FLORANCE: Yeah.

CHAIRPERSON SOCKWELL: So you're saying that the tile facade is not as important as the penthouse?

MR. FLORANCE: No, I'm exaggerating.

CHAIRPERSON SOCKWELL: I thought so.

MR. FLORANCE: It's deeply -- it's heavily referenced as a very, very important Washington landmark.

CHAIRPERSON SOCKWELL: Okay.

MR. CARR: The next configuration is the approved commercial design. So what you see is the parallel HBRB

approval of the northern office scheme.

CHAIRPERSON SOCKWELL: See, one of the things that bothers me about the tower is that if one looks at it from the Seventh Street side, you have probably at some point how many stories? Six stories going on top of the Tariff Commission building?

MR. CARR: Five.

CHAIRPERSON SOCKWELL: Five. So the Tariff Commission --

MR. CARR: Oh, I'm sorry. I was talking about the Murray Building.

MR. FLORANCE: I don't think I know.

CHAIRPERSON SOCKWELL: I think the Tariff Commission is going to get enough stories that it will, in fact, hide completely the Murray Building from viewing from the west unless one is really off to the south side of E Street.

And yet the tower, while being behind the penthouse, which is behind the facade which is really in the back of everything, is going to be this eliminated thing, and it may from certain views detract from the attractiveness of the existing historic facade that has been replicated in concept with your addition.

And yet from the E Street side where it might be viewed at a certain point coming north up Seventh Street, it may have some impact. I'm not sure that I agree that it is

deserving of the additional height as a tower element.

But the question is whether or not the Board chooses to see it as an element deserving approval.

MR. FLORANCE: We felt that it was an important component in the HPRB's considerations. As you know, the idea of the concept is, you particularly being an architect, is that when you're working with historic structure, you want something quiet, something clean, but something clearly not historic so that there is no confusion about what was original and what is the new linkage piece.

We think of this as a link piece between the two or the three structures, and we like the fact that it's set back for the entrance at the street, but providing an attractive lobby.

We think it is just the right degree of being back, being forward, of being up, so that it will be quite clearly a second look element, but a very good second look element. The big show will be the historic structures.

Then as you get used to this building and so on and so forth, you'll have an added boost aesthetically when you become aware of how this tower works, and from the interior.

CHAIRPERSON SOCKWELL: Do you have an elevation which shows this from the alley side?

MR. FLORANCE: You can see compositionally that while you're doing that, that that would be back behind, and

then that doing that.

COMMISSIONER PARSONS: What's the total height of the tower?

MR. FLORANCE: This -- correct me, John, if I'm wrong -- that's 18, six. Well, I forgot.

MS. BAILEY: Mr. Florance, please speak into the microphone. I know. I'm over here. Please remember to speak into the microphone.

MR. FLORANCE: Yes, I will. Sorry.

COMMISSIONER PARSONS: I just meant the total height of the structure above the street.

MR. MURRAY: Above the tower. What have we got, John?

MR. MURPHEY: One hundred and ten plus 26.6.

MEMBER HINTON: Six, six?

COMMISSIONER PARSONS: Did you get that?

MR. FLORANCE: One thirty, six, six, 136 feet, six inches. That is 110, "that" being the top of the Murray Building.

COMMISSIONER PARSONS: So I'm trying to figure out on the lighting again what the appearance will be of this tower for the operative floors, if you will, the lobby floors.

You said they would be clear glass. People would be --

MR. FLORANCE: Yes, they would be.

COMMISSIONER PARSONS: -- looking out.

MR. FLORANCE: Yes.

COMMISSIONER PARSONS: Ceiling lights or whatever. So there'd be a different tone or quality to the appearance of the tower for the first -- all but the last two stories I'll call it, where it becomes opaque; is that correct?

MR. FLORANCE: Translucent, yeah, not opaque, but translucent, with a low level of lighting behind, and in the daytime it will read as simply a glass tower, vertical striation. Clear glass and then that is metal. The whole thing is kept kind of clean and early modern.

COMMISSIONER PARSONS: And what are the white patches shown at the upper level of each floor?

MR. FLORANCE: Those are spandrel pieces, and those are --

MR. MURPHEY: Glass. It would be translucent.

MR. FLORANCE: Again, of translucent glass.

CHAIRPERSON SOCKWELL: Mr. Florance, I'm going to ask you from an impact point of view whether or not -- first of all, let me state it this way. My view of this tower is that there is one significant elevation affected by this tower, and that is the south elevation, and that the tower's impact on the streetscape on the environment is primarily from the south; that from the west it is going to be an off center element sticking up beyond the penthouse with a light in it at night

that during the day will have no importance to anyone other than someone blocks away who might see it, and it will be virtually hidden once the Tariff Commission building becomes a hotel from the west view.

From the east view, looking back along E Street in the other direction, you have the AARP building, and its facade is at the street. Your tower is set deep back into the building. So it will, again, not have an impact on people coming from the east.

From the north it's hidden completely by the Hecht Company, and the south element, the south view coming up Seventh Street, it will have some impact on turning traffic that would see it. It occupies a position where there's a very narrow window angle at which it becomes a strong element in the context of the streetscape and other buildings.

So I don't personally see the strength of the element at its excessive height in context with its surroundings. I do see it in context with a cascading line from the south elevation, but beyond that, I really don't see what it does.

MR. FLORANCE: Well, I use the phrase "a second look." It is not an in your face tower.

CHAIRPERSON SOCKWELL: No.

MR. FLORANCE: And it shouldn't be in this location, and it is something that people will become aware of

over time, particularly the occupants of the building.

CHAIRPERSON SOCKWELL: But if it's illuminated and it is at the same height as the rest of the penthouse structure, it will still be over a story high, illuminated, and a potentially desirable landmarking element for the project.

MR. FLORANCE: I guess my feeling as an architect is that, yes, you could chop it off there.

CHAIRPERSON SOCKWELL: Well, I wouldn't use the word "chop." Let's just say that rather than extending it as desired, we would keep it as required.

MR. FLORANCE: But, on the other hand, we feel this is what gives punch and accent and quality. Even though you don't see it from every cardinal point, it will be seen, and it will be --

CHAIRPERSON SOCKWELL: I guess I understand, yeah, yeah. My trouble is that when one creates a modern element behind an historic reconstruction that is in keeping with the original historic facade below it, that the diminutive aspects should be enhanced, and it shouldn't become a major piece in itself. That's one of the reasons why historic wants less detailed facades with these modern elements.

Here you are taking the reduction in detail and countering it with an increase in impact, and the impact will be felt only at night, and that impact at night will not be significantly enhanced or reduced by the difference in height

with regard to creating a landmarking element for your building.

MR. FLORANCE: Well, I understand all of this, but I still think that it's going to certainly have to come to this. I think that's understand, and I think that's probably true.

We are interested in this project as being one of exceptional design. Now, it becomes quite subjective, but we feel, and I feel particularly, that the composition which is not seen all the time from every place 24 hours a day, but nevertheless will be seen enough so that people will be -- particularly ones who are kind of sensitive to the architectural and urban design environment -- will see that and say, "This doesn't interfere with the historic structure. It simply helps mark a place, and it is a good volumetric composition."

CHAIRPERSON SOCKWELL: I guess my point of view is that the building as a residence is designed to be appreciated from the inside, and particularly appreciated from the inside because it is a residence; that the exterior is to be appreciated for its contextual relationship to the rest of the fabric that remains along Seventh Street and E, which terminates rather quickly at the alley, and that the element of which we speak is really an insignificant element in regard to the entire design because unlike an office building where its

impact on the inside is that of a work place and its impact from the exterior is that of aesthetics, this building is going to live a life of its own inside.

And I'm not sure that that element is going to make one bit of difference to those living within the building once they are in the most attractive portion of the building, which will be the loft apartments and the flats that have been designed very sensitively toward utilizing the existing facades and creating an effective vertical transportation system and all the other things that have been placed in your project description.

So we'll go forward. I think we've talked about the tower enough.

MR. FLORANCE: I think you're right.

CHAIRPERSON SOCKWELL: And we'll go forward with the rest of your presentation.

MR. FLORANCE: Could I make one more statement and then I'll shut up?

CHAIRPERSON SOCKWELL: Okay.

MR. FLORANCE: Promise, promise. You mentioned that the people who live in there may not care that --

CHAIRPERSON SOCKWELL: No, I didn't say they wouldn't care about it. I said the building itself is characterized by its living environment --

MR. FLORANCE: Yes.

CHAIRPERSON SOCKWELL: -- internally. It is important what goes on inside of that building.

MR. FLORANCE: Yes, absolutely.

CHAIRPERSON SOCKWELL: It's not work stations.

MR. FLORANCE: My only point is that I happen to live in an apartment building, if you know the West Chester on Cathedral Avenue, and it is characterized by these beautiful penthouse structures which are every, very well designed. Now, were not in a position to be as prominent as those, but as a resident of the West Chester, I'm very proud of those. It makes me feel good about living there.

And my only point is that I think the same would hold true with the 60-odd people, however many there are, who wind up living in this building. I have a building that has this thing, and so I'll say no more.

CHAIRPERSON SOCKWELL: What about less tower, more foot candles?

MR. FLORANCE: I'd rather have fewer foot candles than more tower.

CHAIRPERSON SOCKWELL: Anyway, let's go forward.

COMMISSIONER PARSONS: Mr. Chairman, I'd like to continue this a little bit longer.

CHAIRPERSON SOCKWELL: Oh.

COMMISSIONER PARSONS: Because I respectfully disagree with you, and I don't want you to be surprised later

on this. CHAIRPERSON SOCKWELL: Oh, no surprises.

COMMISSIONER PARSONS: I think if it was to appear as some kind of extension of the penthouse, which I think it would if we cut it off at the top, it just would not succeed.

CHAIRPERSON SOCKWELL: Well, it does have a reveal of course, a vertical separation, and it is materially separated.

COMMISSIONER PARSONS: I just wanted to let you know that, and to continue on, my concern, and we're going way beyond our jurisdiction here this morning. I mean way beyond, but it's fun, huh?

MR. FLORANCE: Well, at least we provoke you.

COMMISSIONER PARSONS: Yes. I think this translucent quality, this cap on top of your tower is going to look too heavy because of the lighting below it. I think it is going to be most special at night, and I wonder about how you can insure yourself that this appears as a continuous tower, not as something with a cap on it because of the lighting differential.

And I also wonder about the privacy of the residents who are using the wide open tower as they proceed to their units. That's another issue, but I wonder if there's some compromise at night or some lighting scheme that would give you a continuous feel to that, and then I'll shut up.

And that's way beyond our jurisdiction, but it's something for you to take back to the office.

MR. FLORANCE: One thing that we're going to put in it is a big rheostat so that you can come and dial it up or dial it down.

COMMISSIONER PARSONS: That's what we did at the Lincoln Memorial. We have this rheostat, and on it it says "Commission of Fine Arts, 1952," and nobody moves that rheostat.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: But if you get a wireless remote control, then you could sort of be on the street, walk, drive by.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Thank you.

MEMBER RENSHAW: I have yet to weigh in on this. So before we leap to another part of this application, let me just ask the applicant is the penthouse livable space or just mechanical space.

MR. FLORANCE: Mechanical.

MEMBER RENSHAW: It's only mechanical. And from what my eye tells me -- I'm not an architect obviously -- but that tower bothers me because rooftops in Washington, D.C. are not pleasing to the eye in most cases because we --

MR. FLORANCE: We're trying to change that.

MEMBER RENSHAW: -- we know that it's mechanical equipment up there, and it's dead space. And so you are attempting to attract the eye upwards, and you're probably not going to be illuminating the penthouse, just the tower. That is my guess.

MR. FLORANCE: Just the tower.

MEMBER RENSHAW: Just the tower. But yet from the west vantage point, it does look like an air shaft or a chimney that will be lit, and it will draw the eye up to unlivable space on the rooftop, and so that is just my take on it.

I know what you're trying to do from the other vantage point, but from the west side it just doesn't seem to connect as well.

MR. FLORANCE: To respond to that, we think that the west side is going to be its least visible side. So we haven't really perceived that as a problem.

MEMBER HINTON: Maybe the west side wouldn't need to be lit the way the other sides are since that's the --

MR. FLORANCE: That can be -- that's a possibility which we could certainly think of.

MEMBER HINTON: Could I just confirm one thing before we move on? If you would look at Drawing A-4.1, one of the things that raised the question in my mind about what was inside the tower is the label on that drawing that says

elevator overrun in machine room, and then it points to the tower.

And now I think from your explanation that that's actually referring to the space that's beyond the tower.

MR. FLORANCE: Yes, it's behind.

MEMBER HINTON: Behind and beyond, but not in the tower itself.

MR. FLORANCE: Yes. It refers to this space.

MEMBER HINTON: Okay.

MR. FLORANCE: Not that space.

MEMBER HINTON: Okay. So that's part of what raised the question with mine. The reason, I mean, unfortunately, that we have to go into this amount of detail is, as you know, the Building Height Act caps this building at 120 feet. So anything above 120 can't be occupiable space.

MR. FLORANCE: Right. We understand that.

MEMBER HINTON: So that's why it all gets to be very important when we look at it.

MR. FLORANCE: We understand that completely.

MR. GLASGOW: Thank you.

That was one of the issues that we -- and just technically as we discuss this, picking up on one of the points that Mr. Parsons raised, we are not asking for any relief with respect to the tower. We understand that by coming before you, there are things that you all can do with relation to the

tower, but there is no technical jurisdiction of the Board over that tower.

What we have requested is roof structure setback relief for the elements that are, in a sense, beside in part and below the tower. The tower is not subject to the jurisdiction of the Board.

CHAIRPERSON SOCKWELL: In what respect? In certain respects it may not, but not in all respects.

MR. GLASGOW: Well, what we've asked for is roof structure setback.

CHAIRPERSON SOCKWELL: right.

MR. GLASGOW: In that because I think it's been made very plain that if we're going to have elevator service to all of this building, the elevator can't sit inside the Murray building. It has to go out between the two buildings.

CHAIRPERSON SOCKWELL: Understood.

MEMBER HINTON: So then I guess that's what's confusing me then. It sounded to me like there isn't any part of this elevator core that's under your tower that is mechanical space that needs a setback.

MR. GLASGOW: No, we have the whole elevator core is sitting between the two buildings.

MR. FLORANCE: It's subtle.

CHAIRPERSON SOCKWELL: See, the tower portion is integrated into the roof structure.

MR. GLASGOW: That is correct.

CHAIRPERSON SOCKWELL: And the roof structure, as an integrated element, is inclusive of the tower, the machine room, and everything else. And the setback requirements would apply to the entire roof structure.

MR. GLASGOW: We could put a tower on this building with no review.

CHAIRPERSON SOCKWELL: You could put a tower on the building, but not an antenna.

(Laughter.)

MR. GLASGOW: What we want to make sure of is that with respect to the roof structure setback, it in effect is on three sides, the south, the north, and the east. The west we set back.

MR. FLORANCE: Right, exactly.

MEMBER HINTON: I'm totally confused.

MR. GLASGOW: Mr. Florance, have you completed your testimony?

CHAIRPERSON SOCKWELL: Yeah, go ahead.

MR. FLORANCE: I haven't as a matter of fact. We have some other issues that we need to address. We have talked about --

CHAIRPERSON SOCKWELL: Keep your microphone close, if you can.

MR. FLORANCE: The second issue is the fact that

this is a nonconforming court, as Mr. Glasgow said.

CHAIRPERSON SOCKWELL: right.

MR. FLORANCE: The way we used that, and there's not much we can do about it because this building is here and that building is there, and there's no changing that.

VICE CHAIRPERSON REID: Perhaps it would be easier if you could just move that easel.

MR. FLORANCE: All right. Very simply put, here is the courtyard, and at the floor of the courtyard, we are able to provide a terrace and a little terrace for each of these units. So that's the exception that we're asking for.

The other exception we have discussed, and that is the residential space and the recreational space.

CHAIRPERSON SOCKWELL: Right.

MR. FLORANCE: We are at 708 feet, and we should be somewhere around 2,800. We have provided that space below grade, and this is simply a blow-up of the drawings that you have.

The elevators come down to the basement at this location, and this is the 708 square feet that's immediately below the entrance lobby above, immediately opposite the elevators, and we recognize that the regulations require that, and it was our feeling that this would be a meeting room, a party room, that kind of thing.

CHAIRPERSON SOCKWELL: And the space that's

behind it is still to be used for -- no, no, not that way; the other way.

MR. FLORANCE: This is a utility room.

CHAIRPERSON SOCKWELL: And what kind of utilities will be located there?

MR. FLORANCE: John, what are the utilities?

MR. MURPHEY: Water meter, gas meter.

MR. FLORANCE: Water meter, gas meter, electric?

MR. MURPHEY: Electric.

CHAIRPERSON SOCKWELL: So do you wish to speak?

MR. FLORANCE: Those kinds of utilities.

CHAIRPERSON SOCKWELL: All right.

MR. FLORANCE: Obviously located at the street.

The other point --

CHAIRPERSON SOCKWELL: And the space adjacent to it on the right side, yeah, that?

MR. FLORANCE: This is an unfinished crawl space under the intake flow.

CHAIRPERSON SOCKWELL: Okay. So it is a crawl space.

MR. FLORANCE: Yes.

CHAIRPERSON SOCKWELL: All right.

MR. FLORANCE: We do not want to get involved in excavating that if we can possibly -- this space --

CHAIRPERSON SOCKWELL: And the other space on the

far side is a crawl space under the adjacent building?

MR. FLORANCE: Yes.

CHAIRPERSON SOCKWELL: All right. There's no basement. Okay.

MR. FLORANCE: Now, this is, of course, -- it had an adequate ceiling height to qualify, so on and so forth, and that's what we hope and wish to use that for.

CHAIRPERSON SOCKWELL: One of my problems is just that the access to the water meter vault room and all means that people would have to tromp through the residential recreation space to get to it.

MR. FLORANCE: And I think our feeling is how often will that happen, how serious it is. There are going to be times clearly during the day, during the week when there's not much use, if any, of this space. We haven't really seen that as a significant problem.

CHAIRPERSON SOCKWELL: It would be nice if you could put the door someplace else and reverse its swing.

VICE CHAIRPERSON REID: I have a question

CHAIRPERSON SOCKWELL: Go ahead.

VICE CHAIRPERSON REID: In regard to that particular drawing, on the first floor of your plans, you have a retail -- well, you don't have to put it up. I'm mentioning that you have retail in that space above it and also an adjacent space that we talked about that Mr. Sockwell just

asked you about.

Now, my question is explain to me why it is that you could not provide additional recreational space if you wanted to. What prohibited you from doing that?

MR. FLORANCE: Looking at the floor above, there is a lobby, an entrance.

VICE CHAIRPERSON REID: Right.

MR. FLORANCE: And your question is?

VICE CHAIRPERSON REID: Well, on this level, on the basement, the cellar floor plan, you said that on the space that is adjacent on the left, on your plan right there --

MR. FLORANCE: This?

VICE CHAIRPERSON REID: -- that that space that's going to be art/retail, that's what you are looking at it for.

MR. FLORANCE: Yes.

VICE CHAIRPERSON REID: Okay. Now, why is it that you could not expand or give more of that space to the recreation space?

MR. FLORANCE: We could. Our feeling is that the two go in conflict in terms of public policy. One is rec space for the 33 people, the 33 units here, and the other is a largely art center on Seventh Street, and we just think that the whole public goal of providing arts/retail overrides the goal of providing rec space.

VICE CHAIRPERSON REID: Well, actually it's the

six in one hand, half a dozen in the other in that you are providing considerable arts/retail to me it looks like, and it seems that when we talk about the recreation space, conceivably there could be more space out here for recreation because the space that you're allocating to recreation, that 708 square feet is so -- I mean, it's minuscule.

What kind of recreation can you actually expect to occur in that little space?

MR. FLORANCE: Well --

VICE CHAIRPERSON REID: So -- so the point I'm making is given the proffer from the Office of Planning, it just seems to me that I can see no compelling reason why you could not if you wanted to, maybe not the entire 2,880 that was required, but to at least give a little more than that little space that you have already allocated to --

MR. FLORANCE: If I may, I'd love to defer to the man behind the board, David Mayhood, who will be speaking here.

MR. GLASGOW: I think his testimony will be very helpful here.

MR. FLORANCE: Yes. And so I think this concludes my part. We talked about the tower and the setback and so forth. We talked about the court, and I've mentioned the rec space and our feeling about that.

VICE CHAIRPERSON REID: We've been grilled to death on that tower. So --

MR. FLORANCE: Yeah, and if you'd like to hear anymore about it --

VICE CHAIRPERSON REID: No, no.

(Laughter.)

VICE CHAIRPERSON REID: Thank you.

CHAIRPERSON SOCKWELL: Oh, one more question that's being raised by Ms. Hinton.

MEMBER HINTON: Ms. Renshaw.

MEMBER RENSHAW: I wanted to inquire about the unfinished space in the cellar and whether you could -- what is that going to be used for, and why couldn't you increase the residential recreation space into that area?

VICE CHAIRPERSON REID: That was the exact question I was asking --

MEMBER RENSHAW: Yeah.

VICE CHAIRPERSON REID: -- while you all were talking.

MEMBER RENSHAW: No, I heard you.

VICE CHAIRPERSON REID: Well, Mr. Mayhood -- that's after he would be able to respond to it.

MEMBER RENSHAW: I reiterate the question, and he will respond.

MR. FLORANCE: I can explain that. What happens is that under both buildings of the Insect Club, there is no basement, and to use that space, we would have to excavate and

underpin --

VICE CHAIRPERSON REID: Oh, no. I'm sorry. That's the space to the right. That's the space to the right, and you asked me about Ms. Renshaw.

MEMBER RENSHAW: Got it.

MR. FLORANCE: Basically, right.

VICE CHAIRPERSON REID: Okay, yeah, that was, yeah, and then --

MR. FLORANCE: So we feel we have to stay away from that.

VICE CHAIRPERSON REID: And Mr. Mayhood is going to respond to that adjacent space a little after.

MR. FLORANCE: I'm sorry?

VICE CHAIRPERSON REID: Is that correct? Mr. Mayhood now will then respond to the question about the adjacent space, correct?

MR. MAYHOOD: That is correct.

CHAIRPERSON SOCKWELL: Okay.

COMMISSIONER PARSONS: I did have one question about the community space. I'm trying to relate it to the size of this room. It appears to me that it is about 18 by 30; is that correct?

MR. MAYHOOD: Actually 21 by 33.

MR. FLORANCE: Twenty-one by 33.

COMMISSIONER PARSONS: And about half the size of

this room then?

MR. FLORANCE: Yeah.

COMMISSIONER PARSONS: Okay. Thanks.

MEMBER HINTON: I have a couple of other questions.

CHAIRPERSON SOCKWELL: Please, go ahead.

MEMBER HINTON: You looked totally un -- just can't believe that, but actually there are a couple other questions.

Could we look at the roof plan? Because I would just like if you could show me on the roof plan which parts of the roof --

CHAIRPERSON SOCKWELL: Eight, two, point, eight.

VICE CHAIRPERSON REID: Okay.

MEMBER HINTON: Could you show me on the roof plan which parts of the roof structure are not meeting the setback requirements?

MR. MURPHEY: Yeah, we can work to that.

MR. GLASGOW: John, do you want to run through this. We have caucused as to your question. It is a bit subtle.

MR. FLORANCE: Do you have your drawing?

MEMBER HINTON: Yeah.

MR. MURPHEY: Okay. Roof plan. The area is -- you see the major portion of othe penthouse above Murray, smack

dab in the middle of --

MR. FLORANCE: Which is this piece here.

MR. MURPHEY: That is fine. Then if you head on your drawings to the right about halfway on those two sets of parallel lines where it begins not to conform and then to the right.

MEMBER HINTON: So the portion that's labeled elevation 150.72.

MR. MURPHEY: Now, let me clarify. One, fifty, point, seven, two is the height of the roof.

MEMBER HINTON: I understand.

MR. MURPHEY: There's two walls on both sides. So those parallel lines represent screen walls that connect the typical or what you expect the penthouse to be with the elevator portion, which is square and sets off from the --

CHAIRPERSON SOCKWELL: So actually there is not a -- because this is residential and, I assume, individually handled, there is no cooling tower in that between those screen walls.

MR. MURPHEY: Right

CHAIRPERSON SOCKWELL: But it's just open above.

MR. MURPHEY: Exactly, exactly.

MEMBER HINTON: Ms. Renshaw has a really good idea, and that is could you take that drawing and shade the areas of the roof that do not meet the setback requirement that

we're being asked for the -- that would be great.

MR. GLASGOW: What has been marked to show that so that we can get these technical areas of relief, we have the south wall of the roof structure, the east wall, all right, and the north wall, and then because of the technical nature of the relief, since there is a wall here, the east side of the wall for the Murray Building, there's this portion which, I guess, is where most of the confusion is. Is there technically relief there?

And, yes, what those two -- we sort of made a choice as to how we would address technical relief under the regulations. If you leave these two walls out and you ask for multiple roof structures --

CHAIRPERSON SOCKWELL: Separate, yeah.

MR. GLASGOW: -- which we had originally, or since we were already asking for roof structure setback, you connect the roof structures and you have an additional 30 feet of screen wall to connect the two roof structures.

MR. FLORANCE: Which made it a single and organized roof structure.

MR. GLASGOW: Roof structure. So it was a choice as to which area of relief to go, and that's why we had -- originally we had two roof structures, or connect them, have one roof structure, but increase slightly the area where there is not sufficient setback.

There's technical setback from some angle here as you look at this, but right at this point right here, it doesn't set back sufficiently.

MEMBER HINTON: Okay.

MR. GLASGOW: Do you want this entered into the record?

MEMBER HINTON: Yes, but before you go, you have it going out around that tower component, and from my understanding of how you explained it, because above the 120 foot part it is an architectural embellishment tower.

MR. GLASGOW: Right.

MEMBER HINTON: It has no function, no occupiable space.

MR. GLASGOW: Correct.

MEMBER HINTON: No mechanical anything.

MR. GLASGOW: Nothing.

MEMBER HINTON: So then it doesn't -- it's not a rooftop structure that requires a setback.

CHAIRPERSON SOCKWELL: But it's unified with the roof.

MR. GLASGOW: But it does not; the piece under it does.

MEMBER HINTON: But the piece under it is below 100 and --

MR. GLASGOW: But it doesn't meet the setback

requirements from the wall. If you look at the model, assuming for a second that there was no tower element for a minute --

MEMBER HINTON: Okay.

MR. GLASGOW: -- and just put your --

MR. FLORANCE: If that were just plain flat and you didn't have this.

MR. GLASGOW: Right, and didn't have a tower at all.

MEMBER HINTON: Right.

MR. GLASGOW: Forget all of that explanation. From the east side there is still technically relief required, and from the south side with respect to that element, which is underneath the tower.

MR. FLORANCE: Up until this point --

MR. GLASGOW: If you pull this tower off of here, all right?

MEMBER HINTON: Yeah.

MR. GLASGOW: This underneath of it, which is part of the elevator core, all right, does not set back a distance equal to its height from the exterior wall of the building.

It's very technical, as you can see.

MR. FLORANCE: It's very complex.

MEMBER HINTON: It doesn't seem to me to be part of the roof structure. I guess that's where I am -- if we buy

into the fact that the tower above the elevator, the whole part of the tower that's above the --

MR. FLORANCE: -- you think is not part of the rooftop.

MEMBER HINTON: Yeah.

CHAIRPERSON SOCKWELL: See, the tower itself is part of the elevator lobby of the building. So it is part of the building, and once you go above the roof height point, it then becomes roof structure.

MR. FLORANCE: Yes.

MEMBER HINTON: No, because I think what they're saying is once it goes above building height it becomes an architectural embellishment tower. It's not mechanical, right?

MR. GLASGOW: That's correct.

MEMBER HINTON: So then it's not part of a mechanical structure that needs a setback.

MR. GLASGOW: I know. The reason why this line is here, that's why I referred to the model.

MEMBER HINTON: Right.

MR. GLASGOW: Is because this line, you would really have to look at it in sections and say, well, where is the setback for the mechanical equipment, and the elevator portion, and it's underneath part of this. It's underneath this southeast corner, this area here.

If you pulled that off, you would still have

relief for the area underneath of it.

MEMBER HINTON: Oh, okay, okay, okay.

MR. GLASGOW: Does that work?

MEMBER HINTON: Yeah. Two other questions. Do any of those units on the top floor have access to the roof?

MR. FLORANCE: No.

MEMBER HINTON: What is the purpose then of that thing that's going around the top of the building that looks like -- it's called an architectural embellishment, looks surprisingly --

MR. FLORANCE: Do you mean the balustrade?

MEMBER HINTON: Is it a balustrade?

MR. FLORANCE: Yes.

MEMBER HINTON: It looks solid in your drawings.

Is it not solid?

MR. FLORANCE: No, it's not solid. It's a balustrade.

MEMBER HINTON: Okay. Okay. And it's just -- there's no access to the roof. So it's not the edge of a terrace or anything like that?

MR. GLASGOW: No, no.

MEMBER HINTON: Could it possibly be labeled "balustrade" instead of "architectural embellishment"?

MR. FLORANCE: Well, I don't -- yes, it could be.

MEMBER HINTON: Because from --

MR. FLORANCE: Do you have any problem with that?

MR. GLASGOW: We can certainly put that in parentheses.

MEMBER HINTON: It looks as solid as the building in the drawings, and if it's a parapet wall, it can't be up there. So it has to be not a parapet wall.

MR. GLASGOW: We could keep it simpler than that. We could call it "railing."

MEMBER HINTON: You could call it what?

MR. GLASGOW: Railing.

MEMBER HINTON: Yeah, that would be great. Can we do that?

CHAIRPERSON SOCKWELL: What's the height of that parapet? Three feet exactly.

MR. GLASGOW: We were going to use the same set of plans that have the roof structure and label it on that set.

CHAIRPERSON SOCKWELL: Okay. That's all of Ms. Hinton's questions. Are there any other questions before we go forward?

MEMBER RENSHAW: Just one small question. On the second floor plan, you spoke about the private terrace that will be enjoyed by two apartments, and you have listed a private railing. Is that a security fence? What is that?

MR. FLORANCE: Are you talking about --

MEMBER RENSHAW: Right up there?

MR. FLORANCE: -- this piece?

MEMBER RENSHAW: Yes.

MR. FLORANCE: A privacy fence.

MEMBER RENSHAW: A privacy fence. So it would be seven feet high?

MR. FLORANCE: Something like that. It's not designed, but it would be what you would expect.

CHAIRPERSON SOCKWELL: You mean the vertical?

MR. FLORANCE: The vertical divider.

MEMBER RENSHAW: Okay.

MEMBER HINTON: In looking at the drawings we've noticed there are a number of places where they still refer to ten stories, like in the six to ten stories typical in other places. Could that correction be made also, that it's just a nine-story building?

MR. GLASGOW: Yes.

MEMBER HINTON: Thank you.

MR. GLASGOW: Is the Board ready for Mr. Mayhood

--

CHAIRPERSON SOCKWELL: Yes.

MR. GLASGOW: -- to begin his testimony?

Mr. Mayhood, would you please identify yourself for the record and proceed with your testimony?

MR. MAYHOOD: Good morning. My name is David Mayhood. My address is 1420 Liberty Road, McLean, Virginia.

I'm president of the Mayhood Company and have been involved in multi-family development of the District since the mid-'70s.

I think as you've already figured out, this really is a unique building. I think Mr. Carr kind of situated it well. Rather than being a new construction, it's not dissimilar from a Dupont Circle renovation.

I think you're also seeing this is an adaptive reuse, and you're seeing some of the challenges that come up in taking a structure and converting it to viable and certainly very good residential.

From our perspective, it is certainly a gem of a building, but it's also unique in other ways. Let me step back just a little bit.

We've all heard about the residential revitalization in the District and all of the new construction that's going on. This building is going to be a condominium, a 33-unit condominium.

Last year how many new condominiums were delivered in the District of Columbia? About 300.

When was the last time there was the new development of a condominium in this Penn Quarter neighborhood? Almost 12 years ago at Market Square.

So to some degree, this building being a condominium and being in the Penn Quarter neighborhood is very unique. Most of the new multi-family development being done in

the District, as you're well aware, are large apartment buildings with a somewhat different clientele, and certainly with a somewhat different need for rec facilities.

If you think about where this is located, I had the opportunity last week to speak to a New York Times writer who was writing an article about luxury condominiums in the Washington metropolitan area, and we started talking about different locations, and you really take a step back and realize for someone who wants to enjoy the city, and all decades of talk we've had about living downtown, this really is ground zero. This really is the opportunity.

And I would almost submit unparalleled in Washington. You can walk about the front door of this and literally walk to the Shakespeare Theater. People in marketing will sometimes say only a minute's walk, but this truly is a minute's walk.

You can go up a block, and you're at the MCI Center. You're at the Woolly Mammoth, coming in next door on Clara Barton. You've got the Portrait Gallery. You could walk to history. You're a block and a half from the National Archives, and you're about two and a half blocks from the largest amenity in the metropolitan area, the Mall.

So you kind of step back and say this is really ground zero for a condominium in town, clearly infill development, adaptive reuse infill development.

There's a term that is used in infill urban development called the bundling of amenities, and it's basically taking an urban location and rather than trying different than you do in a suburban location where you add a pool and club rooms and meeting rooms, et cetera, et cetera, the bundling of amenities concept says let's put real top quality residential in this location, and the amenities are the bundling of the amenities in the immediate blocks around.

This is probably the best example you will find in Washington of that opportunity.

I learned from Cope to stay close to the mic.

The space we're talking about is this bit. As Mr. Parsons indicated, it about half the size of this room. So we think of 700 square feet as not very big, but 700 feet is about the size of a one-bedroom apartment.

There's 33 homes in this community. I would anticipate the units in the Insert Club are primarily one bedrooms, single occupants. I would anticipate the number of residents in this building are probably 40, maybe 42.

They have world class amenities in art and theater and restaurants, in sports within a block. They are not going to want to go down to a 700 square foot windowless room to recreate. I mean, what is the purpose? How will they utilize this space or what other needs do they have?

Typically when a condominium association meets,

they will meet in the lobby of the condominium. It is well lit. It is certainly safe. It is central. It has good seating. It is a nice environment, and they will have an annual meeting once a year.

The board of directors -- yes, sir. They normally will have a meeting once a year.

CHAIRPERSON SOCKWELL: I'm president of a condominium board. I'm just listening.

MR. MAYHOOD: Okay. No, that's the entire condominium association will be once a year. The condominium board will certainly meet more often, most likely meet in someone's apartment.

We can create a room for them in the basement, but if I have a second or third floor unit in this building that has ten or 12 windows ten feet high overlooking Seventh Street, I think the desirability of those kind of smaller meetings, of six, eight, ten people -- I'm sorry. Maybe five or six people -- would certainly not be done at a community room in the basement.

The concept of taking that 700 square feet and multiplying by four to create 2,800 square feet of rec facility at the expense of art space, the people who are going to occupy this building, if they were here, would say, "We would rather have the gallery and the art space and the night life on Seventh Street rather than creating space that won't be used in

the building.

I would contend the 700 square feet is questionable, whether it would be used. The 2,800 square feet in my perspective of where this fits in the market and who's going to be in this building is just not justifiable.

This building will clearly be a gem and will be one of the best buildings in Washington. When you do adaptive reuse spaces at a premium, to utilize space or put space in that's not going to be utilized by the residents, I don't think that's a good design.

CHAIRPERSON SOCKWELL: Well, Mr. Mayhood, I believe that the space provided in your present scheme at 708 square feet is approximately -- it's just over one percent, and five percent would be the desired norm. That is not having the advantage of looking at each individual design project and its benefits, amenities, design specifications, the way the living spaces are handled.

So that 708 square feet, there is space that could be rededicated by the co-owners at some point if they chose, once they own it, although that's not our responsibility.

MR. MAYHOOD: Or necessarily easily done if you're in a condominium board.

CHAIRPERSON SOCKWELL: Yeah. Well, it's less fun when you're president.

MR. MAYHOOD: Yeah.

(Laughter.)

MR. MAYHOOD: I'm sure you ran though, didn't you?

CHAIRPERSON SOCKWELL: And we have 243 co-owners there.

The point is that I think that recreation space requirement has at least been advanced by locating what you have relocated to remove the locker area, which was originally.

MR. MAYHOOD: Sir, I don't disagree with anything you've said other than maybe the word "desired" when you spoke of the space, and I would probably ask back: that desire is being created by what? By whom? And by where? What need?

CHAIRPERSON SOCKWELL: Yeah, and as a property management person with a great deal of experience and history, I'm sure that you have many reasons to believe that this space for this particular type user might be overkill, but it is not uncommon for me to go to parties or event at upper income apartment units and have those events take place in a space other than the apartments themselves.

MR. MAYHOOD: More typically in large complexes though, sir.

CHAIRPERSON SOCKWELL: But not necessarily.

MR. MAYHOOD: I could --

CHAIRPERSON SOCKWELL: The thing is it's not so

much the size of the complex. It's the demeanor of the owner and whether or not that owner wants to have people tromping through his or her living room or down in a public space where the carpet can be shampooed and you can get out of there by wiping off a few tables, but it just depends.

And I'm not saying anything except that we do have requirements for recreation space. Those requirements have certainly been looked at very carefully by the Office of Planning and everyone else to determine whether or not they are adequate requirements, especially where housing is being initiated in under developed areas and in areas where housing is a priority, but has not come on line in the time frame expected.

So I'm certain the ward is going to be very sensitive to what you have provided.

MR. MAYHOOD: Thank you.

You certainly in your discretion can define what you believe to be adequate. I think what I'm trying to say is any kill is overkill. I don't think we need to be going to that point.

I think the rationale of saying that later a homeowners association could change issues and change is back to something else, as you're well aware, those kind of changes take majority of the residents of the building. Isn't it more a matter of getting it right the first time rather than

creating the problem for later?

Well, if it is a problem, it would be determined -- the only way we can determine whether or not it is a problem is to have the residents here to say prior to the creation of this development that they don't want it.

MR. MAYHOOD: And show, obviously, of being able to do that, then the decision has to be made on what the determination of adequacy is.

COMMISSIONER PARSONS: Aren't exercise rooms typical in units of this kind?

MR. MAYHOOD: With the advent of the considerable number of large health clubs downtown, if you have the opportunity to see what went in at the Ritz Carlton, the inclusion of a small health facility, especially in a basement is not used, is sometimes a concern for security. It is pretty much out of vogue to be putting in a small, five or 600 square foot in a complex in a lower level.

Typically the consumer would prefer to belong to one of the larger, more expansive health clubs and to get some degree of socialization out of that.

A health club in the basement here would probably be used maybe by three individuals in the morning and one or two at night, typically avoided by the female for security concerns

COMMISSIONER PARSONS: thank you.

VICE CHAIRPERSON REID: May I have a question?

CHAIRPERSON SOCKWELL: Go right ahead.

VICE CHAIRPERSON REID: Mr. Mayhood, I don't remember your ever having testified as an expert witness before. Have you been --

MR. MAYHOOD: Yes, ma'am. Mr. Parsons and I have had good exchanges over the years.

VICE CHAIRPERSON REID: Okay. Well, I don't --

MR. MAYHOOD: I think I was originally here in 1978 on a building for the Carr Companies.

VICE CHAIRPERSON REID: That's way before my time. Nonetheless, I'd like to -- if you have a resume or something that we could.

MR. MAYHOOD: I can certainly submit that.

VICE CHAIRPERSON REID: I would like that please.

MR. MAYHOOD: Yes, ma'am, thank you.

VICE CHAIRPERSON REID: Very much so, but now my question then goes to this aspect of the original space, and we'll hear from Office of Planning to get a little bit more idea as to what their feelings because in their report they specify that should it not be used for the space that has been specified or the use specified, i.e., retail/arts, then within six months of the issuance of certificate of occupancy before being turned over to the condominium association, that it would be -- may be used for the recreation space.

So I'm not really sure. I have to find out from Office of Planning what, in fact, their rationale is because it doesn't seem like it's really that big a deal to them.

Nonetheless, I do think that in listening to your testimony, that we have to be mindful of the fact that the regulations are put in place for a reason.

MR. MAYHOOD: Correct.

VICE CHAIRPERSON REID: And obviously it's very easy to rationalize off what that reasoning might be and say, "Oh, well, these people are not going to like rent this and these people," whatever the count of these people was such that they may not even want to go downstairs, and da-da-da-da-da. But nonetheless we still know that there's a reason for that rationale, for that requirement -- I'm sorry -- for that requirement.

And I differ with you in certain aspects of your testimony in that in my way of thinking in a building like -- a small building, my thought would be that most people would appreciate having a space where they could entertain without entertaining at home if they wanted to have like a party or whatever and not have to have it in their small space at home or other types of amenities that are commonly expected in a condominium -- a condominium building wherein health facilities or what have you or meeting room.

I don't know about this meeting in the lobby and

all of that. Nonetheless, it seems to me that it would be something that would be a good amenity provided by the condominium association obviously or by the developers in building this.

Obviously the things that you mentioned were external to the building. People certainly can walk to all of these different things, and they're accessible to this type of entertainment and that and what have you. But nonetheless I would think that equally as important would be something inside, inclement weather, that the persons who lived in that building would be able to enjoy.

Now, I will reserve my ultimate decision on that predicated on what I garner from the Office of Planning.

MR. MAYHOOD: If I may respond to that, my background for more years than I'll say has been in marketing.

So my perspective on this is what the consumer's expectations are, what the consumer is going to want there, and an awful lot of experience of what they use after they purchase.

Because of the amenities in this neighborhood, this consumer is not coming in looking for a place to entertain on the lower level. They are, as I said before, bundling the amenities of the neighborhood and are there for that reason.

You talked about the reason for the requirements, but you also have the discretion when the requirements create an unreasonable amount, more than adequate, not necessarily to

enforce what is the requirement, but to allow what was reasonable.

VICE CHAIRPERSON REID: I think --

MR. MAYHOOD: So the test of reason a little bit goes both ways on that.

VICE CHAIRPERSON REID: I think, Mr. -- that I did mention in what I just said that I reserve --

MR. MAYHOOD: I appreciate that. Thank you.

VICE CHAIRPERSON REID: -- opinion predicated on what I hear from Office of Planning.

MR. MAYHOOD: From my experience in marketing, maybe more than 40 condominiums in the District of Columbia over more than two decades, this consumer is not coming in asking, "What kind of amenities do you have in the building?"

They're saying, "What is the floor plan? What's the ceiling height? How many windows do I get?"

A couple of these units have 12 windows, and they already know what's in and around the neighborhood.

VICE CHAIRPERSON REID: Okay. Thank you.

CHAIRPERSON SOCKWELL: Board members, any other questions?

MEMBER HINTON: No.

CHAIRPERSON SOCKWELL: All right. Then let's go to government reports. We have the Office of Planning.

MR. GLASGOW: Unfortunately, Mr. Chairman, we

have one more witness.

CHAIRPERSON SOCKWELL: Oh, I'm sorry. Well, in that case, fortunately we have one more witness.

MR. GLASGOW: Thank you.

CHAIRPERSON SOCKWELL: Oh, how --

VICE CHAIRPERSON REID: Oh, sure.

CHAIRPERSON SOCKWELL: -- could I have forgotten?

VICE CHAIRPERSON REID: Shame on you to forget Mr. Sher.

CHAIRPERSON SOCKWELL: Well, Mr. Sher is always so quiet before it's his time.

MEMBER HINTON: I think he was sleeping.

VICE CHAIRPERSON REID: Two gentlemen there sitting right in front --

CHAIRPERSON SOCKWELL: Oh, I'm sorry.

VICE CHAIRPERSON REID: -- has said he's also a witness.

CHAIRPERSON SOCKWELL: Oh, okay. I'm sorry.

VICE CHAIRPERSON REID: For the applicant or for --

CHAIRPERSON SOCKWELL: Sir, excuse me. Are you a witness for the applicant?

MR. ROBINSON PARKS: No, I'm not.

CHAIRPERSON SOCKWELL: Are you with the ANC or --

MR. ROBINSON PARKS: No, no. I'm a concerned

citizen in the community representing ten members of the community.

CHAIRPERSON SOCKWELL: Oh, all right. Fine.

VICE CHAIRPERSON REID: In opposition or support?

CHAIRPERSON SOCKWELL: Opposition?

MR. ROBINSON PARKS: Well, proponent with reservations.

CHAIRPERSON SOCKWELL: Okay. Thank you.

Please, Mr. Sher.

MR. SHER: Mr. Chairman, members of the Board, good afternoon. For the record, my name is Steven E. Sher. I'm the Director of Zoning and Land Use Services with the law firm of Holland and Knight, LLP.

An awful lot of what I put before you and what I was about to say had already been covered in response to the sort of detailed questions of the Board. I was going to talk about the roof structures and where the heights of the buildings are and all of the rest of those things. So I'm going to really try and make this short and talk to what are the standards or the areas of relief that the Board has before it.

But I want to back up and just focus on one other piece of what this application is about, which you haven't really talked much about this morning, and that is that this is a part of a development that is including the property you see

here, but will also be part through the combined lot development process of a larger development site on the northern side of the square.

That's going to be an office building utilizing the existing Hecht's building and then the parking lot to the east of that. This is the residential component of that larger development and the reason that this gets complicated is, of course, that the downtown development district is a pretty complicated piece of regulation to begin with, and this particular square on this combined site fits within three sub-areas of the DD. It's within the housing priority area C. It's within the downtown arts district, and it's also within the historic preservation section.

So you've got to read all of those requirements together and look at what's going on in the totality of the DD and then what happens is some of those requirements are being satisfied on this site. The remainder are being satisfied in the rest of the project.

We're not here for relief from any of those other requirements, but it's just a complicated set of interrelationships that causes what happens to go on here.

Part of that then has to do with the fact that we have a requirement to provide arts and retail uses, and it's not just a "oh, let's do it." It's a requirement. So we've got to provide one FAR equivalent of arts usage, of which a

certain amount has to be galleries and other type uses. Some of that is being satisfied over there. Some of that is being satisfied over here. We've got the two FAR residential, some of which is being satisfied off site through the \$500,000 contribution made and approved a long time ago, not talking about that. The remainder of the residential is being satisfied on site here.

In fact, there is no residential requirement for this piece of ground itself. The requirement is on the piece of ground over on F Street, but it's allowed to be satisfied over here.

I just want to sort of put all of that out there as part of the context for what's going on here.

Again, the three areas of relief are the setback of the roof structure, and I think the Board's been around that enough to know now where we need the areas of relief for this piece of the elevator override and mechanical equipment area, not for this piece, not for that piece. The tower stands by itself, and I'm not going to go into that anymore unless you start all over again on me. And after having been all through that with Cope.

And, again, the reason that that setback can't be met, of course, is that we're coming straight up on the wall here, straight up on the wall here, and that whole piece of area here is only about 20 by 20. If you had to set back 15

and a half feet from each side, you wouldn't have anything left to be able to do it all.

So I think we've dealt with that part. The second part, of course, is the court requirement, the court variance, and again, it is that piece at the back of the building which I think you've all been around before. I'm knocking over the witness cards. It's the small piece at the bottom.

About the only way that you could make that any bigger is if you start shifting that whole elevator core to the front. When you go back and start looking at what that does to the floor plans of the units and how this part -- when I say "this part," I'm talking about the 625-627 E Street -- relates to this part -- and by "this part" I mean the Murray Building with its addition on top.

This is about the only place that that elevator core wants to be. If you push it all the way to the back, you don't have a court at all. You don't have to worry about a court variance. If you bring it all the way to the front, you've got a court that complies, but then you wind up not having the elevators at a place where they can access the units.

So, in effect, there's a little bit of room to move this one way or the other, but no matter how you do that, you're still going to wind up with a court problem.

The last area is the residential recreation space, and again, you've heard some of that. I could but I won't talk about how that piece of regulation got in there in the first place, and with all due respect, I'm not sure how carefully crafted it was because I had something to do with that when it was done, but nonetheless --

(Laughter.)

MR. SHER: -- it was not my idea. Somebody else in the office thought it was a great idea. It got put in the regulations, and I don't think it really was thought through very well, frankly.

But nonetheless, it is part of the regulations, and we're here and seeking a variance on that.

You've heard Mr. Mayhood's comments about whether or not it is an essential part of this, but I think I would just urge you to remember as you think about particularly that lower level where we've got retail art space, that is required.

Preferred use is under another piece of the DD, and you begin to get to questions of if you have to reduce the one, what does that do to all of the other things that we need to do.

And we certainly don't want to be back here asking for additional areas of relief if we have to take some things away that we thought we had in the first place.

So having said all that, I think that the applicant, given the small size of the site, the existence of

the two buildings, one at a higher height, one at a lower height, the need to provide access to both, create an accommodation of things which make an exceptional situation or condition of the property, and I think that the relief could be granted without detriment to the zone plan, and I think that's what you ought to do.

CHAIRPERSON SOCKWELL: Thank you, Mr. Sher.

And it would be your opinion, based on your intimate knowledge of the ordinance that if the tower portion were not connected physically to the roof structure, it would in itself be possible to extend it without concern for the setback requirement?

MR. SHER: Yes. Again, without trying to reargue or reexplain that whole situation, this building is 110 feet high, not 120. That's the maximum allowed. The streets are 90 feet on Seventh and 90 feet on E. The width of the street, plus 20 feet, 110 feet.

There is a roof at 110 feet. There is a penthouse that goes 15 feet, eight above that. There's a roof at the top of the penthouse.

Anything that goes higher than that under either the regulations or the act has to be something specifically set forward and allowed for. Towers are one of those elements that are allowed, and I could point to any number of buildings in and around the downtown and the C-4 district where towers have

been built.

Many of those towers are actually pushed out to the face of the building. Many of them are corner properties.

I'll give you a couple of examples: 14th and L, southeast corner; 18th and Eye, southeast corner; 19th and Eye, northwest corner, are all buildings which have tower elements that actually fit at the intersection and go up higher than the height permitted.

They're unoccupiable space. There's nothing in them. There's not even mechanical equipment in there. It's just towers.

This one is a little bit unusual. I was going to say peculiar, but unusual because it's set back into the center of the site where the elevator core also wants to be. So you have this combination of things where you've got the tower next to and beside and in front of the roof structure, but the tower itself doesn't have any mechanical equipment in it, isn't an elevator override, and is not a roof penthouse as set forth in Section 411.11.

CHAIRPERSON SOCKWELL: That's very concise.

Questions?

(No response.)

CHAIRPERSON SOCKWELL: Thank you, Mr. Sher.

There is one question before we go to the Office of Planning report, just one quick question. That is because

this is a combined lot development and there was a requirement for low and moderate income housing to be provided as an overall aspect, it didn't have anything to do with this site, but it has to do with the overall project, and that was an escrow fund created for location someplace else. Where is that housing going?

MR. GLASGOW: That is also in ANC-2C. It's at the Golden Rule Plaza project with Bible Way Church.

CHAIRPERSON SOCKWELL: Okay. In the North Capitol and Fourth.

MR. GLASGOW: New Jersey and, yeah, New Jersey, New York Avenue, and I believe it's Second Street over there. The freeway is on one way.

CHAIRPERSON SOCKWELL: The Golden Rule supermarket place is on the south end of that.

MR. GLASGOW: Yes, it's not that site. It's the site just south of the church.

CHAIRPERSON SOCKWELL: Okay, all right. Thank you.

We would now do government reports, after which we have persons or parties.

MR. GLASGOW: Mr. Chairman, we had one last thing we want Mr. Florance to deal with, and that deals briefly with the residential recreation space and the inability to use any of the roofs because, as you may recall, under Section 773.8,

we have not less than 50 percent of the total residential recreation space shall be outdoors. We're going to submit through his testimony we have no place to put it outdoors, size of the lot, multiple roofs, that type of thing, destruction of units, minimum area sizes.

I believe residential recreation space under 773.7 if it's to be used on a roof has to have a minimal dimension of 25 feet, and we don't have that other than one particular location. If we put it there, means of egress cause a problem. I'd like to have him get that into the record very quickly.

MR. FLORANCE: Very briefly, we do not have the 25 foot dimension on top of the Murray Building. So that rules that out.

So where we could conceivably put it is on this piece of roof here on the Insect Club. The reason we are very reluctant to do that -- and you will see -- is that we would have to have two means of egress.

Now, clearly one means of egress could be back into the tower, but the other, the only place we could put it would be somewhere back here. Now, if we put it back here, we are going to gravely compromise the unit that occurs in here, and this unit has a disadvantage going in in that it's on the alley.

And so what you can readily see is that that

point is this point, and we would have to eliminate that much of this apartment. That is the kitchen. This is the dining area. This is the living area, and we would lose that. We would, in effect, lose in toto -- because that's three times -- we'd lose the equivalent of half a unit devoted to a staircase there.

And even if we did that, we'd wind up with a rooftop here which is buried and not a very attractive environment for a recreational space.

So that's why we have avoided proposing a rooftop recreational space.

MEMBER HINTON: The private terraces don't count towards recreation space, right?

MR. FLORANCE: No.

MR. GLASGOW: No, they do not.

CHAIRPERSON SOCKWELL: And, Mr. Florance, you feel that the fact that -- well, the alley is a loading alley, and there are going to be some difficult conditions to deal with with regard to that anyway from what I understand in terms of moving the dumpsters in and out.

MR. FLORANCE: That kind of thing, yeah. And there would be oversight from the AARP, that kind of thing.

CHAIRPERSON SOCKWELL: Sure.

MR. FLORANCE: You're out doing your tai chi and everybody in the building is watching you.

CHAIRPERSON SOCKWELL: They might be unhappy because it would be happy hour when they couldn't enjoy it.

All right. Anymore witnesses, Mr. Glasgow?

MR. GLASGOW: No, sir.

CHAIRPERSON SOCKWELL: Thank you.

All right. Now, it's time for the Office of Planning.

DEP. DIR. MCCARTHY: Good afternoon, Mr. Chairman, members of the Board. I'll keep my report brief, and then if you have any additional questions we could go into those.

I know you had a chance to read our report.

Basically the Office of Planning concludes, as you've seen, that this application meets the uniqueness test to the kind of configuration of these lots, the history of variances. Up until this point, the attempts to combine three historic buildings and adaptively reuse them and put them into one building make for some -- make it truly unique and also certainly contribute to the practical difficulties as well.

With regard to the special exception for the differing wall heights and the setback requirements for the roof structures, our feeling was that it had no adverse impact onto the neighboring properties; that it was not sufficiently visible and was not in and of itself the source of a visual problem.

It's hard, as you saw with the roof plan, it's hard to even sort out where the problems come in terms of setbacks and differing heights of those walls as opposed to just where all of the roof structures have to be.

With regard to the courts, I think in terms of the practical difficulties, Mr. Sher explained that quite clearly and had the benefit of the model to turn upside down and show you about movement of the elevator. So I think he made it fairly clear that that elevator, in order to be able to have units in the back and units in the front and access it in the middle, you really have to have the elevator where it is, and it creates that core that's pretty much -- it would create a serious practical difficulty to have to move that someplace else.

Lastly, with regard to the recreation space, as we indicated in our report and as you know, the Office of Planning has proposed a reduction in recreation space in the downtown to the minimum that has been contained and that was contained in any of the DD commercial jurisdictions, commercial classifications, which is the DD/C-4, which was five percent.

And we did that for a number of reasons, one of the main ones being that we didn't want to see a situation in which providing for recreation space ended up reducing the number of units that were going to be provided in projects, given how important the goal is within the comprehensive plan

of reaching the 5,400 units south of Massachusetts Avenue or as close as we could get to that goal.

We also felt that the goal of having a living downtown was to encourage people to be on the streets, to utilize the restaurants and cafes and art space and to create a vibrancy and vitality that would not be achieved if we were encouraging everybody to stay within their buildings and to pursue their sole recreation options within their buildings.

We also, as you know, in the comprehensive plan, we felt that the goals that had been set with regard to preferred uses, with regard to retail and arts are extremely important goals, and especially in this area because retail and arts at the street level, in particular, also contribute to that pedestrian vitality and also reinforce the fact as the applicant indicated this is where three districts come together.

You've got the charm and scale and detail of the historic buildings combined with the concentration of arts along Seventh Street, the theaters along E Street, and putting a substantial retail and arts component in this building, this is located at a spot which makes it particularly important to reinforce those uses.

With regard to the practical difficulties making it difficult to get to the five percent limit, as Mr. Florance just explained and the Office of Planning concurs, it's very

difficult to get recreation space on the roof decks, and you'll recall that the projects that we've seen up until this point that we've granted variances from the five percent target all were able to put at least a portion of their recreation space on the roof.

That's extremely difficult in this site, but in addition, in some of those projects you also had land that was configured where the lobby area is fairly deep and you could put exercise rooms or business centers or party rooms toward the rear part of that lobby.

This is a corner building, and as a corner building, it provides the possibility of doing retail and arts and having street frontage for those not only on F Street, but around the corner -- I'm sorry -- not only on Seventh Street, but around the corner, and so to take that space which could be providing very important exposure for retail and art space and to turn that into recreation space seemed to us to be at odds with other really important goals of the comprehensive plan.

So we looked to the basement, and we encouraged the applicant to use at least a portion of the basement space for recreation space which they agreed, and I guess I wanted to clear up the discrepancy, I think, just because of handwriting on notes back and forth. We had said 735 square feet in our report. Seven hundred and three square feet, I believe, is what the applicant had indicated they could do and what we had

somehow had --

CHAIRPERSON SOCKWELL: I think it's 708.

DEP. DIR. MCCARTHY: I'm sorry. Seven, oh, eight. Like this, just a few communications difficulties along the lines.

But we don't have any serious objections to the amount that they are talking about versus the 735 we had in the report.

We also had had a condition in there of timing that we -- when the applicant had explained that with regard to the basement space they wanted to reserve the additional space for retail and arts, and we said we would like a condition that would say were they not able to use that for retail and arts, then we would like it reserved for recreation space in the building.

We had put the timing clause in there because we had assumed that this was going to count as common area space and that, therefore, if the tenant improvements weren't made to change it into recreation space by the time the building were turned over to the condominium association, that would be an extra expense which, you know, may or may not have been adequately provided for by the condo owners.

However, when the applicant's counsel and I talked this weekend and he clarified that, in fact, the developer intended to retain the ownership of that space, lease

it out, and hopefully find a tenant that then is interested in purchasing it, it remedied some of that problem, and it made it more possible for us to say: all right. Then the emphasis on requiring that to be done within a very short time period of transferring the building over was not as important to us.

And we asked the applicant whether it would be possible to submit something in writing just to, you know, actually clarify that or you could ask the applicant to say something on the record.

The last little housekeeping detail is that it is necessary to get a combined lot covenant, and I've spoken to the applicant's counsel about that because the density on this building is slightly above the six FAR that is provided for.

When you average it out over the density on the lot, it's five, but in order for the Board, I think, to be able to give a clean bill of health here on all of this and feel that the project can then be build, that is a detail that we should just note for the record needs to be executed.

And I believe that those are the major salient points for our record. So the Office of Planning definitely concludes that this is an important project. It's really a fabulous project, and it will animate a section of downtown that has been sadly vacant too long and will have really -- picking up from the revitalization that's proceeding up from Pennsylvania Avenue and in combination with this Square 457

project, will add to what's already a great section of town and make the linkage up to the MCI center when the last portion of this is done and, I think, really transform that section of town.

So we feel that the variance tests have been met, and that this could be accomplished with no adverse impact on the zone plan or with the neighboring properties, and we recommend to the Board that it approve the project.

Thank you.

CHAIRPERSON SOCKWELL: Thank you.

Questions, Board members?

VICE CHAIRPERSON REID: I had just a couple of quick questions.

Thank you very much for clarifying that whole issue of that recreation space. I think I have a much better understanding as to what the objectives were with the regulations, as well as the comprehensive plan, and that's much clearer.

DEP. DIR. MCCARTHY: And it made me realize as I was sitting here we turned in a report to the Zoning Commission yesterday in response to some information they had asked for with regard to our proposal to reduce the recreation space requirement to five percent, and we did trace the history of recreation space requirements.

And it occurred to me that that would be

something that would be very useful for the Board, too. So I'd be happy to get a copy of that report.

VICE CHAIRPERSON REID: Please, appreciate that.

DEP. DIR. MCCARTHY: And make it available to you.

VICE CHAIRPERSON REID: But my question to you with in regard to loading berth. It says that the architect was advised that a loading berth appears to be required under the zoning regulations.

Is one required? I wasn't clear on that. Did we ascertain?

DEP. DIR. MCCARTHY: This report was, I should mention, written by Mr. Jackson from our staff, who's attending the American Planning Association conference this week. So I know that he had discussed that with the applicant, and I believe they had worked that out, but you may want to ask the applicant that question directly.

VICE CHAIRPERSON REID: Yeah. Could you respond to that, please?

MR. GLASGOW: Sure. We discussed that under Section 2100.5 and 2200.5. We have a waiver from the Historic Preservation Review Board staff. I can submit a copy of that for the record. I think Mr. Sockwell, I'm sure, is familiar with those papers.

CHAIRPERSON SOCKWELL: Certainly.

MR. GLASGOW: And Ms. Hinton. We don't have --

VICE CHAIRPERSON REID: Okay. I didn't hear any discussion about it, and --

MR. GLASGOW: Tight. That's because I had worked that out with Mr. Arthur Jackson.

VICE CHAIRPERSON REID: Okay. Now, the other thing was one more. In regard to the covenant, now, the covenant that is attached, I suppose, was the one provided by the purchaser, contract purchaser, Mr. Glasgow, the covenant?

MR. GLASGOW: Yes, the settlement -- the covenant that's attached to the Office of Planning report?

VICE CHAIRPERSON REID: Un-huh.

MR. GLASGOW: Right. I think that that's been submitted to this Board in various cases probably about three or four times.

VICE CHAIRPERSON REID: Un-huh.

MR. GLASGOW: Yes.

VICE CHAIRPERSON REID: But my question, no, my question was this was provided by who. Who provided this? Was it the contractor purchaser or --

MR. GLASGOW: No, this --

VICE CHAIRPERSON REID: Oh, I see. This was a part of the land --

DEP. DIR. MCCARTHY: This was -- right. We attached this report so that you would understand that in

addition to some of the -- in addition to the restrictions that the applicant was bound by dealing with the --

VICE CHAIRPERSON REID: Okay.

DEP. DIR. MCCARTHY: -- preservation and then zoning and everything else, that this was the result of a court case, and it's another set of conditions that they are --

VICE CHAIRPERSON REID: Okay. Now, my question was on page 2 of the covenant, it says that the grantor -- this is the third paragraph -- "whereas, the grantor will use the property pursuant to the terms of the above referenced purchase contract, which provides for certain commercial uses pursuant to leases in effect at the time of the purchase completion.

"After expiration of these leases, grantor will use the property for residential and residentially related purposes only."

I don't -- could you please --

DEP. DIR. MCCARTHY: When the property was bought, the Insect Club was occupying this property, and because it had a lease that was already signed, it would have been permitted to stay in there for several years, but it subsequently went out of business? Yeah.

VICE CHAIRPERSON REID: Okay. Thank you.

DEP. DIR. MCCARTHY: Due to limited demand for dining with an insect theme.

(Laughter.)

VICE CHAIRPERSON REID: Okay. Thank you very much.

CHAIRPERSON SOCKWELL: Ms. McCarthy, just one, say, a typo in the fourth paragraph, second page. It was not intended to mean this, but it says, "To the north are also some other vacant structures, including the original Hecht Company buildings and the MCI Center."

DEP. DIR. MCCARTHY: Yes. I'm sure that was a typo. It may have been really referring to the retail space in the MCI center which has not been a roaring success.

CHAIRPERSON SOCKWELL: Of course, when the Wizards are playing, it's more vacant than at other times.

CHAIRPERSON SOCKWELL: Yes, yes. That's true.

There is also a typo on page 7 in Paragraph 5, the paragraph that starts, "The Office of Planning has supported a reduction." If you go down to the fourth line there at the end where we said, "Most other projects in the DD/D utilized roof decks to meet" that should have said "a portion of their recreation space requirements," because none of them meet their requirements entirely with roof decks, but they do meet their requirements, at least a portion of them through the roof deck.

CHAIRPERSON SOCKWELL: In the following paragraph, I just wanted to note a slight disagreement in that the hypothesis on residential recreation space reductions

seemed to say that restaurants and galleries were considered an option when in the -- not an option, but amenities that help contribute to the need or the diminishing of the requirement.

And I believe that because those are primarily not within immediate access and would be in the restaurant situation retail facilities and with galleries, if you're talking about Zenith and some of the others; they are also considered to be retail, but they're not the kinds of things that are defined as requiring residential recreation space or equating to residential recreation space.

DEP. DIR. MCCARTHY: No, and we would definitely agree with that. I mean, this sentence was, in fact, carefully crafted because we wanted to say there were other opportunities for recreation and socializing, and that might reduce the importance of recreation space, but it certain -- we in no way suggest that that substitutes.

There is a certain amount of kind of a suburban throwback to our recreation space requirements, and they seem more applicable to places where, you know -- to garden apartment kinds of settings out in the suburbs where if you don't have sufficient space to get, you know, any sort of recreation on the grounds, your options are limited unless you happen to be by, you know, the Capital Crescent Trail or some other kind of public recreational amenity.

And so we require that, but it seems that the

importance of it is less in the downtown area where you can go out and walk on the streets. There are sidewalks as opposed to some suburban areas. You can, you know, you can get fresh air and recreation and exercise that way, but, yes, we would agree with you that a gallery, a restaurant, while it might have a kind of "Cheers" feeling within your apartment building, it's not the same as having a place to exercise where you're not annoying the neighbors or a party room or something else.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

MEMBER RENSHAW: I'd like to ask Ms. McCarthy on page 5 of your report, in the one, two, three, fourth paragraph, you talk about "the project architect indicated that large vehicles, such as loading vans would park in the alley."

And we've been back here trying to figure out where is the alley. Could someone show us on the drawings where the alley is?

CHAIRPERSON SOCKWELL: It goes up E Street into the --

MEMBER RENSHAW: Is it a through alley?

CHAIRPERSON SOCKWELL: No.

MEMBER RENSHAW: It's a dead end alley?

MR. FLORANCE: It's a dead end alley, yes. It comes right up here. AARP is here.

CHAIRPERSON SOCKWELL: If you look at Sheet A.01,

Anne, which is the first sheet inside the cover sheet. And if you look to the left of center, you'll see the building indicated at the bottom of the page, and the alley is to the right of the building. Bingo.

MEMBER RENSHAW: But you state that loading vans would park in the alley. Is that alley not going to be kept free or is it going to be a parking area?

DEP. DIR. MCCARTHY: Oh, I'm sorry.

MEMBER RENSHAW: I was asking about the alley. Is the alley going to be kept free or is it going to be a parking area for commercial vehicles?

DEP. DIR. MCCARTHY: I don't believe commercial vehicles would be legally entitled to park there.

MEMBER RENSHAW: Loading vans would park in the alley. Is that just temporary?

DEP. DIR. MCCARTHY: Well, right. I meant would load. I'm sure Arthur meant would load and unload there, but not that they would have any kind of regular parking spaces there.

CHAIRPERSON SOCKWELL: And pick up trash.

MEMBER RENSHAW: And that's where your trash dumpster is or whatever it's going to be, a compactor?

MR. FLORANCE: Right. It's in the building, but access from the alley.

MEMBER RENSHAW: Do you have to close that alley?

Not at all?

MR. CARR: No, that's the function of a public alley.

MEMBER RENSHAW: But it's going to be dedicated just to your use?

MR. CARR: No, there are three uses on that alley. The Chophouse services --

MEMBER RENSHAW: Okay.

MR. CARR: -- its trash and loading from the rear. The Hecht's building restored will service its functions from the rear alley, and so will this building. So there are three principal users of that space.

CHAIRPERSON SOCKWELL: And I guess we've got a couple of elements. I had as well noted the alley access issue, but if there is, in fact, no loading berth per se, but there has to be a method by which the move in and move out of co-owners would take place and there has to be a way to remove trash, the issue is how effectively has that been handled with the design of the building.

MR. FLORANCE: We'll show you what we --

MR. CARR: You'll see on the first floor that there's a service corridor from the elevator core out to the alley.

MR. MURPHEY: On the first floor plan. On you first floor plan you see that we've recessed that --

CHAIRPERSON SOCKWELL: Turn on Mr. Glasgow's mic, please.

MR. MURPHEY: On the first floor plan, we've recessed that as much as we could in that we were so constrained by the existing footprint in the alley and so on that we pulled the entrance five, five and a half feet back from the face of the building, and we'll bring in a small area so that you could make it loading and unloading easier.

CHAIRPERSON SOCKWELL: All right. So I think the principal issue here is going to be that for your purposes, any loading that you provide is adequate because you have a variance, a waiver not to have to provide it.

MR. MURPHEY: Right. We have two reasons for that. One is that we have the historic preservation waiver.

CHAIRPERSON SOCKWELL: Certainly.

MR. MURPHEY: And secondly, under the zoning regulations in Chapter 21, apartment buildings less than 50 units don't have to have a loading berth.

CHAIRPERSON SOCKWELL: Surely, and the issue, I think, that Ms. Renshaw raises is one that we typically like to raise when public alleys are being utilized, that is, that this is a dead end alley. So it's a point specific access. It goes to the back of these buildings, and it stops.

There is from the fire access standpoint virtually, I believe, sufficient access to the building from

that standpoint on both E and Seventh. The height of the building does not prevent the tallest trucks from reaching the building, but the question is that because the alley is a public alley, I mean, you're trash is going to be delivered out to the alley and taken away, and people are going to move in along that alley, and it is a condominium. So you're not going to have on-site management per se unless you have a caretaker, and I don't know that there was any provision for that.

So it just is a situation that is of concern.

MR. CARR: There will be a management company respond for its day-to-day operations. We, of course, will in all likelihood initially offer to run the association from our on-site management office in that block.

CHAIRPERSON SOCKWELL: Okay. So you'll have --

MR. CARR: We run the AARP building. We would run the entire commercial development proposed at the corner of Seventh and F, as well as this space, at least in the association's initial life. And this is provided in a space set back from the alley itself. So I think it would be not unlike any other alley function in more of a residential district where you pick up the trash, empty it, and leave.

CHAIRPERSON SOCKWELL: Is there any other process accessed by that alley?

MR. CARR: The Chophouse Restaurant is accessed by the alley, and our project, our commercial project, is

accessed by the alley. The Hecht Company to the north.

CHAIRPERSON SOCKWELL: So there might be a reason to at some point approach the city for an alley closing with a dedicated easement for access to the two properties and then you could do with it as you pleased.

MR. CARR: I guess I -- certainly we could. We feel that's effectively the use it's dedicated to today. We're the only three users today. So it would be no different than how it is now.

CHAIRPERSON SOCKWELL: Except that it wouldn't be a public alley anymore.

MR. CARR: Of course, but practically speaking the only three users are the three owners side by side along Seventh Street, and we'll cooperate on what really is a fairly generous space.

CHAIRPERSON SOCKWELL: Yeah, and the idea of that cooperation is going to be very important because the Chophouse has to receive its products, as well. The apartment building will have to be available for move in/move out and trash removal as the Chophouse.

So that coordination is going to be important for the life of this building.

MR. CARR: We have a very good relationship with Mr. Jamal, who's our next door neighbor. We've cooperated in talking about this endeavor with him already, and as I say,

initially we'll be running two of those three operations ourselves.

CHAIRPERSON SOCKWELL: All right. Okay. Well, I don't have anymore questions

VICE CHAIRPERSON REID: Are we still with the Office of Planning?

CHAIRPERSON SOCKWELL: Yes.

VICE CHAIRPERSON REID: I do just have one question, and I know that basically being that this particular applicant has already gotten approval through Historic Preservation, it's really a moot point, but I was just wondering in the overall scheme of things was there any thought given to - -I just wonder about where these people were parking their guests.

MR. CARR: We'd be happy to address that if you'd like.

VICE CHAIRPERSON REID: Okay.

MR. CARR: As you saw in the first floor plan, there is a service corridor running on the first floor from the elevator core towards the alley for the trash and loading function.

This is the basement level, and directly under that, my point was there's a second corridor directly under it running from the elevator core below grade under the alley to the parking garage nearby.

VICE CHAIRPERSON REID: I see, and they just basically rent parking space and --

MR. CARR: There are spaces dedicated --

VICE CHAIRPERSON REID: -- AARP has agreed to -- oh, okay. I was just wondering.

MR. CARR: AARP has agreed to dedicate parking, yeah.

VICE CHAIRPERSON REID: That's great. That's great.

MR. CARR: Yeah.

VICE CHAIRPERSON REID: I'm happy to see that you practically made that provision --

MR. CARR: Yes.

VICE CHAIRPERSON REID: -- without it being required. It will also help sell those condominiums.

(Laughter.)

DEP. DIR. MCCARTHY: You know, I probably should add one more little note that I had written down that I meant to mention with regard to the practical difficulty issue, and that is that this project only has 33 condominiums in it. It's quite a small project.

On our Downtown Housing Task Force, we had looked at 75 being kind of a minimum level in order to make operating cost and common space area management doable, and so that was another factor that was weighing in our determination that the

use of what could otherwise be common area or recreation space as rentable retail and art space could help with the burden that otherwise that common space could represent for a base of condominium owners that's that small.

MEMBER HINTON: Could I ask a question of the applicant?

CHAIRPERSON SOCKWELL: Yes.

MEMBER HINTON: The lobby area, someone had mentioned that often homeowners associations will meet in the lobby. Who would be providing the furniture in the lobby? Is that something that the developer will do or is that --

MR. CARR: We would do it as part of the initial development.

MEMBER HINTON: And do you visualize that to be sort of chairs, like almost living room furniture, couches, coffee table kind of thing?

MR. CARR: I would plan on there being a significant seating arrangement in that space.

MEMBER HINTON: Okay. Because I am pretty much convinced that that would be a suitable and acceptable and even preferred meeting area than a room that's down in the basement that is about the same size. You know, based on that it is a very limited number of units, that it is only 33.

And I'm a little concerned about in order to provide that room, what you're removing from the proposal is

storage space for the units, which is also -- when you have a small unit, that's also really important to have.

MR. CARR: Right.

MEMBER HINTON: It was originally on the plans, little storage rooms sort of.

VICE CHAIRPERSON REID: Oh, that was the one before the final.

MEMBER HINTON: Right. So --

VICE CHAIRPERSON REID: Yeah, page A-2. So there is no storage now for the tenants.

MR. GLASGOW: Did you want us to put on the record now Mr. Carr's confirmation of the understanding that Ms. McCarthy and I have with respect for the testimony and the obligation for that retail -- that art space in the seller level? Because we can get that on the record right now.

I know she and I have had the discussion because it impacted, you know, her testimony with respect to the concern about the conversion over of the space over a period of time, which, you know, we had an issue with.

MR. CARR: We do intend to dedicate that art space both on the first floor and on the B-1 level as private space, tenanted on a lease basis or owned by an arts establishment. A gallery is our initial focus.

So we would provide a FedEd allowance to that user to improve the space with his own layout and furnishing.

So that is intended to be long-term private space with an arts dedication.

Secondly, we agree that recording a combined lot covenant is a necessary step in the road towards obtaining our building permit, and we've intended to record a combined lot covenant that does establish these arts and housing relationship that both Ms. McCarthy and Mr. Sher indicated are part of this kind of global use arrangement in the entire block.

CHAIRPERSON SOCKWELL: Let me ask one last question since we're talking about this still. The unfinished space under the two or at least the first adjacent structure to the east is a crawl space.

MR. CARR: Right.

CHAIRPERSON SOCKWELL: Your excavation is going to require that you underpin this building on two walls, the two interior lot line walls.

With that level of modification to the foundation and that much attention to it, why did you not consider going ahead with a structural design that would allow the excavation of that unfinished space to utilize as additional area?

MR. CARR: Let me comment, and then let me ask John Murphy to comment as well.

Certainly that's a question we've all asked ourselves. It would seem on the plan that clearly there's an

opportunity to dedicate that for other space from a layout standpoint, but I think as we begin to investigate the height of the footings under those two historic buildings, the requirement that we honor all party walls in their current position. So we have a full building requirement in terms of our preservation there, and we're trying to minimize the penetrations through those walls, and we hesitate to get into the structural modification of those buildings to, in fact, underpin the whole substructure of those two existing buildings.

We're trying to no disturb its structural fabric any more than necessary, and it seems a very difficult and trying undertaking to do that for the benefit that could be produced by doing that.

CHAIRPERSON SOCKWELL: I mean, we've moved contributing buildings from one end of the site to the other in the District to just put them where they needed to be to be used as community buildings, and we're talking masonry buildings.

I don't understand exactly what you're saying there, but I will certainly be willing to accept your hypothesis.

MR. CARR: I've asked the same question of my staff and my construction manager and the architect, and I think their advice is that we don't want to get in there and

disturb those footings with that degree of underpinning and that level of excavation under two historic structures.

But let me ask John to speak to it.

CHAIRPERSON SOCKWELL: I mean, they're not landmarks that are contributing, but I mean, we've done it. I mean, it's not magic to it.

MR. MURPHEY: I would just underscore that the underpinning of the two interior walls is one thing, but if you enclose the space or utilize the space under the second one, it would mean underpinning the other two and then getting into possibly underpinning the third.

And they're reasonably in good shape. They're brick building, but we didn't want to get underneath them because then we could be getting into a really big problem.

CHAIRPERSON SOCKWELL: Okay. The question was asked, I mean, if there were space to be gained.

MR. GLASGOW: We would have done it.

CHAIRPERSON SOCKWELL: All right. That's the end of my questions. Anymore questions for the Office of Planning?

VICE CHAIRPERSON REID: I have none.

CHAIRPERSON SOCKWELL: Then we will go to individuals or parties.

VICE CHAIRPERSON REID: Huh-un.

CHAIRPERSON SOCKWELL: Oh.

VICE CHAIRPERSON REID: ANC.

CHAIRPERSON SOCKWELL: I'm sorry. That's right.

Do we have an ANC report? No, I didn't think so.

VICE CHAIRPERSON REID: No, there is no ANC, but note that for the record that there is none.

CHAIRPERSON SOCKWELL: Oh, I'm sorry, that there is no ANC report on this.

VICE CHAIRPERSON REID: I think that --

CHAIRPERSON SOCKWELL: And nothing from the Department of Public Works, is there?

VICE CHAIRPERSON REID: I think -- should that be in the Office of Planning report, that there was mention that there was -- maybe not. Okay.

(The Board conferred.)

VICE CHAIRPERSON REID: The assumption is that with no report that has been filed, that there is no opposition to this particular application.

MR. GLASGOW: We attended the ANC meeting, and they took a vote, but they didn't get the letter in the file.

CHAIRPERSON SOCKWELL: Yeah.

MR. GLASGOW: It was unanimous in support.

CHAIRPERSON SOCKWELL: Yeah, it does say here that you presented on the 7th.

MR. GLASGOW: Yes, there was a presentation on the 7th.

VICE CHAIRPERSON REID: Okay. I thought I saw

something.

MR. GLASGOW: But there is no letter. So all we can state is that, yes, we were there on the 7th, there was a vote taken. It was unanimous in support.

CHAIRPERSON SOCKWELL: Okay.

VICE CHAIRPERSON REID: And if they didn't like it, they'd be down here.

CHAIRPERSON SOCKWELL: So for the sake of the record, there's no reported vote.

VICE CHAIRPERSON REID: Or they would certainly let us know. Okay. Then --

CHAIRPERSON SOCKWELL: All right. Then we can go to persons or parties in support. Please come forward if you're a supporting person. Yes, turn in your witness cards. Thank you.

Are there any opponents here? No.

MR. ROBINSON PARKS: Let me introduce myself. My name is Bill Robinson Parks of Robinson Parks Associates.

I am a working professional in the community. I consider myself a neighbor.

CHAIRPERSON SOCKWELL: And give your address, please, sir.

MR. ROBINSON PARKS: My address you need -- my address is Post Office Box 70004, Washington, D.C. 20024.

CHAIRPERSON SOCKWELL: So your home address is

not --

MR. ROBINSON PARKS: My home address is in Washington, D.C. My home address is 105 P Street, S.W.

CHAIRPERSON SOCKWELL: Thank you.

MR. ROBINSON PARKS: Is my home office.

I approach this as a resident of the District of Columbia and as a working professional downtown and as a cultural and arts advocate, and also very importantly as an advocate for social equilibrium and also tranquility and goodwill downtown.

I consider myself a neighbor, and I'd like to commend Carr America and other developers for doing the great deal of renovation and improvements downtown. It's certainly enhancing the downtown area.

However, I offer my sensitivities to some of the needs of the arts communities that have has been expressed by them and also other working professionals in the area in terms of how downtown is transitioning and whether or not there's a feeling of inclusion or exclusion in these projects.

I am in full support of the gallery, of the arts gallery and retail concept. However, what's happening as a part of this project is there is a period of uncertainty or transition, if you will in terms of where what is currently situated may be at this location, and there could be clarification as to the plans for that.

At this location there's a gallery with a very noticeable landmark mosaic that has an African Egyptian motif where there's no plans for it to be relocated. The only assumption is that it's going to be destroyed.

It is not historical in the traditional sense of facades of historical buildings, but it is certainly a recognizable landmark, and with a lot of the discussion talking about aesthetics and design, it represents a real major visual landmark in the area.

Above it there is another sculpture, and being that this is an arts community and there is sentiment among artists that individual independent creative artists are being displaced by downtown development that I'm sure all of you are familiar with, the dialogue and discourse going on or debate, if you will, going on regard that, because no plans have been expressed for the relocation or the preservation of that mosaic, then I think that that's a source of concern.

There's also a sculpture above that that is sort of a lit profile of a person, sort of in a running profile that is by another local artist, and there's no plans for it.

I certainly am not here to question the bottom line business decisions of a company trying to do business and being successful with a condominium mixed use type of facility, but I'm certainly concerned about the sense of camaraderie and community for the downtown area.

For those of us who have been around Washington, D.C. for a while, we remember those images of ladies coming downtown and shopping at Hecht's and shopping at Woodies, you know, being very proud of their purchases, and having the sense of community of being seen downtown and walking around downtown.

A lot of that is eroding away, and that sense of goodwill and social camaraderie is eroding away, and a sense of alienation may be setting in for those who can afford the condominiums and those who are sensed as being left out.

And as a marketing and public affairs professional consultant, I'm concerned that this sense of goodwill may not be as preserved as it could be without considering how we're going to transition from what is currently in place, the galleries, this particular gallery with an African and also an Egyptian artistic motif.

There's also an African drumming class being conducted in one of the -- I guess it's a sub-basement around the corner in a nearby building. You know, what are the future of these activities? Because these activities invite folks who can't afford the condominiums.

And I think part of the living and working downtown is not to exclude diversity in the downtown area. In other words, if you don't have enough money to live down here, if you don't have a significant amount of money to spend down

here, you shouldn't come downtown.

If you don't identify with the cultural bias, if you will, that would establish if these considerations for transitions are not addressed.

It is very interesting that a lot of emphasis have been put on aesthetics for the tower, exceptional design, architectural embellishment, and all of these things which to me represent arts and creativity, but it's not extended to the pedestrian traffic and the potential folks who are going to be coming downtown and spending money who are not in resident downtown.

There was talk about the bundling of amenities. Those amenities would be further enhanced if you had a sense of the neighborly environment and happy pedestrians who can identify with some of the motifs, some of the designs, some of the art galleries that exist downtown, and not feel alienated from all or most of them.

The definition of recreation as has been discussed here is kind of interesting because if a well to do resident identifies recreation as being beyond the walls of their condominium structure, then it's also better served by maintaining some transition or accommodation outreach for existing artists and gallery individuals who are currently there to transition out more gracefully so that there is a smoother interaction between those who are coming in those who

may be departing or those who can yet remain for those while those who are coming in.

Again, to have an environment of inclusion and not exclusion.

CHAIRPERSON SOCKWELL: Mr. Parks.

MR. ROBINSON PARKS: Yes.

CHAIRPERSON SOCKWELL: Mr. Parks, with regard to the specific proposal that is before us, I want to get to the thrust of your concern, and you spoke --

MR. ROBINSON PARKS: And I need your laser pen.

CHAIRPERSON SOCKWELL: Okay. That's fine. Here we are.

Because you did speak to sever specifics, and I want to get to those.

MR. ROBINSON PARKS: Okay. One specific, and this is a result of being in dialogue with --

CHAIRPERSON SOCKWELL: Turn it the other way.

MR. ROBINSON PARKS: Okay.

CHAIRPERSON SOCKWELL: And then just push the button.

MR. ROBINSON PARKS: Okay. What exists here is a landmark which is a masonry mosaic that is this here, is a very artistic and creative and original and to many people important mosaic above which is another sculpture with a back lit form that looms above that.

Now, there's been no evidence of any dialogue taking place with the proprietor or the occupant of that as to the future of either the mosaic or of the diversity that's represented by the artifacts inside there.

Neither has there been any indication of any of any dialogue with the artist who that back lit form originates from. That's one specific.

Given that that dialogue can and should take place, then there is a discussion as to now how do we transition from what exists to what is planned and how do we accommodate it in such a way wherein the current advocates and initiators of the, say, art walking tour -- I think it's Thursday evening, the third Thursday -- these galleries that exist here and that exist here. What's going to happen in the interim?

Secondly, with the discussion of aesthetics of being a lit tower, why it is a vertical element, a vertical concept rather than a horizontal concept whereby all of this space from here, say, up to the line -- what I call the line of opportunity here, why that is all dead space and how is it that that can be afforded from here to here.

There's nothing -- I'm looking at this particular model here. There's this big hole here. And we all know that real estate is very expensive downtown. We're talking about a very do we say high rent district or very expensive real

estate, and there is an air pocket here, which to me represents an area of opportunity wherein not only can accommodations be made, but also we talk about additional recreation space. I'm talking about additional retail, arts, and income space.

And I'm a very big appreciator of architecture. I love architecture, and I -- just like I love law and I don't hate lawyers because law represented reason, but it seems to me that that is an area of opportunity between here and here.

And not to argue the aesthetic judgment or decisions or signature piece of an architect, but that's a missed opportunity from here to here. And so these are some of the concerns.

And when all is said and done and folks are -- things are demolished and folks moved out and then you have some tenants, maybe all tenants are there; maybe they're happy; maybe they are not. Maybe you'll have smooth coordination here in the loading zone, and maybe you won't.

Maybe you might have some disputes between people who want to use that for whatever reasons, to turn around in that block and maybe there's conflict there.

Our concern from a marketing and public relations standpoint is that whatever variance is granted, that there should be some conditions and considerations and provisions made to address the ground level appreciation of the hard work that goes into these type of projects by including sustaining

those elements down on this level so that people who frequent the area now and who will be in the area in the future will say, "Oh, I can relate to what's going on here. I feel comfortable with what's going on here. I feel like I'm in a friendly environment, not alienated from. I feel socially acceptable here and not socially inadequate here, and I can interact comfortably with both the residents here, albeit different levels of income, and both with the culture diversity here."

And I don't see that addressed at all in this plan. Again, I am all for the improvements. I am a proponent for the Carr America's efforts to improve the area, but I am very concerned about the sense of socialability and quality of life and interaction, especially when we consider that these condominiums are being sold as a bundled type concept with all of the amenities in the surrounding area because as a person who works in the area, I'm concerned about people down here on the ground level getting along, and that there -- you know, that there's a sense of friendly neighborhood feeling in this area.

CHAIRPERSON SOCKWELL: Mr. Parks, the Board appreciates your comments on this. Now, there are a couple of things that I would like to say.

One, I would like to ask. You spoke of "we," and does that mean that you are representing a dedicated group of

individuals or are you speaking in the collective mind of one whose interest in the art community and the diversity is being expressed by you?

MR. ROBINSON PARKS: The diversity is being expressed by the artists. There has been a number of meetings and social gatherings around the artistic activities in the community. That's very real.

And we're talking about providing arts opportunities, but there's no addressing of how do we transition from where we are now to where we would be in the future and who would be included and who would be excluded and whether or not there's some way to accommodate a period of time where those who are now holding down that area and making it comfortable for people to come out there and visit, whether or not their efforts are now null and void and they are to be, you know, moved out and that's that. Even if you can afford the square footage, you don't.

I am not here as -- I'm here gratis. I'm not here in the employ of any particular group. I'm here as a volunteer observer, as one working professional in the area. Speaking from a collective state of mind from the standpoint about being in dialogue with individuals involved in this area, around this mosaic and this artistic motif, I participated in gallery activities here. I've spoken to artists, some of which are very well known in terms of articulating their concern

about the original independent artists being moved out of these areas.

So it's both collective in mind and also referencing active dialogue that's going on in that community.

CHAIRPERSON SOCKWELL: Well, let me say this. With regard to one of your initial discussions of opportunity, point of opportunity, the way the buildings have been designed for their units as has been presented today, that dead space that you spoke of is actually window area for bedrooms and other interior portions of the units on both sides, both in the two existing structures to the right and the Murray Building to the left.

MR. ROBINSON PARKS: Oh, this is Dimes right here? No, this -- this is Dimes, this is Murray? Okay.

CHAIRPERSON SOCKWELL: To those buildings, those are part and parcel of the need of the apartments for light and air, and that is what's going on.

MR. ROBINSON PARKS: Along here.

CHAIRPERSON SOCKWELL: Yes.

MR. ROBINSON PARKS: Okay.

CHAIRPERSON SOCKWELL: Now, let me say that to the extent that I am familiar with the sculpture and the motif of mosaic that exists, they to my recollection were not commissioned pieces, but were pieces and elements established at a time when there was a need for more artistic description,

and if you recall on the other side of the street, the use of a green grass-like material and other elements to try to make what was at the time vacant and less used space more attractive in the interim before a development might take place.

I don't know. We have received no description of saving or relocating or returning to the original artist the running figure. We have not received any information with regard to the need or interest in preserving the mosaic.

MR. ROBINSON PARKS: Well, I'm expressing a need and interest in preserving --

CHAIRPERSON SOCKWELL: But I don't know if the applicant has plans for those. It just has not been described.

MR. ROBINSON PARKS: Exactly.

CHAIRPERSON SOCKWELL: Because we were talking about towers.

MR. ROBINSON PARKS: Right.

CHAIRPERSON SOCKWELL: We were talking about setbacks. We were talking about residential recreation space -
-

MR. ROBINSON PARKS: Right.

CHAIRPERSON SOCKWELL: -- and other things, and perhaps the applicant might wish to respond to those, but in general it seems that what you are saying to the applicant and to this Board is that the sensitive revitalization of property such as this should include consideration of those who are

currently utilizing the spaces, currently acting as -- they are currently pedestrians and currently users of the downtown streets that will now have new life given to them, and that life may be a change from what was before.

And you're saying to us that you do not want to see the people who were there excluded from involvement with what will replace those preexisting conditions and uses.

MR. ROBINSON PARKS: Exactly, and key to that is some type of transition plan. I cannot speak for the finances and the economics of other individuals and their organizations and efforts, but I can speak to the need or sensitivity for some type of transition plan where we go from where we are now to future and whereby these stakeholders feel that they at least (a) have been consulted and recognized as being there and (b) that some considerations are given for them to be included in some capacity in the future, be it short term, moderate term or even long term or basically realistically speaking short term and moderate term and say, well, the displacement is going to require something and, therefore, we are going to provide something.

CHAIRPERSON SOCKWELL: Let me ask you two questions. One, did you attend the March 7th Advisory Neighborhood Commission meeting?

MR. ROBINSON PARKS: No, I did not.

CHAIRPERSON SOCKWELL: Okay. And, two, you are

at least casually in touch with the various gallery owners and individuals who are artists within the neighborhood, and while they did not come today to present any arguments against or for this project, you feel that you have represented their thinking on transition, and in doing so, the only thing that I can request is that the applicant, if they so choose, speak to any of the issues of transition because the Carr Company has been in this neighborhood for some time.

MR. ROBINSON PARKS: Exactly.

CHAIRPERSON SOCKWELL: He's been there for a while.

MR. ROBINSON PARKS: In all due respect, let me just say that I did speak to one representative from the Carr America Company and some degree of receptivity has been expressed in terms of considering proposals, you know, with whatever type of support that can be mustered to support, you know, to sustain those type of proposals, and that discussion has taken place.

I just feel it's my civic duty to be on record and to provide testimony for a level of sensitivity in terms of maintaining a working downtown wherein people get along.

Being that I work downtown and I see how people don't get along sometime around some issues, like feeling alienated from what's going on downtown, feeling excluded from the high price and the high rent, you know, life style of the

area, feeling displaced from what downtown used to be as a gathering spot for Washingtonians, you know, shopping and being seen downtown --

CHAIRPERSON SOCKWELL: Certainly.

MR. ROBINSON PARKS: -- and all of these things, the crowds that are attracted by the MCI Center and how they view downtown and these type of developers an opportunity that we can ameliorate some of that potential conflict or tension, if you will, from the multiple users of downtown and the diversity of the residents and occupants downtown to remedy some of those situations.

CHAIRPERSON SOCKWELL: Well, thank you very much.

Yes.

MEMBER RENSHAW: Mr. Chairman.

VICE CHAIRPERSON REID: I'd just like to jump in here real quick.

CHAIRPERSON SOCKWELL: Please go right ahead.

VICE CHAIRPERSON REID: I'm sorry. Your name again?

MR. ROBINSON PARKS: My name is Bill Robinson Parks, Robinson Parks Associates.

VICE CHAIRPERSON REID: Mr. Robinson --

CHAIRPERSON SOCKWELL: Parks.

VICE CHAIRPERSON REID: -- certainly -- Mr. Parks.

MR. ROBINSON PARKS: Robinson Parks, yes. It's a double last name.

VICE CHAIRPERSON REID: Okay. I've listened to your testimony, and I certainly take to heart what you're saying and your concerns are, I think, very real concerns, and the applicant has heard you, and hopefully when they have closing remarks they will somehow respond to it.

However, I'm not really sure. I was just trying to -- trying to garner how this particular Board -- whether or not this is the forum, the correct forum to be able to address the concerns that you're raising.

MR. PARKS: Well, the --

VICE CHAIRPERSON REID: Do you see what I'm saying? Because this is for a special exception and variance which is taken to Zoning, and as such, I just don't -- I can't see where it is within our purview to be able to -- let me finish -- to be able to address those concerns, but I do think that those concerns are very real concerns and legitimate concerns, and perhaps there is another vehicle by which those concerns can be addressed.

But we can't condition within a zoning variance or a special exception the kind of social issue that you're raising. Unfortunately I don't -- I'm just not --

MR. PARKS: Okay. It's part social.

VICE CHAIRPERSON REID: We haven't got that kind

of authority.

MR. PARKS: And your point is well taken. It's part social and part professional. As a working person downtown --

VICE CHAIRPERSON REID: Oh, I understand. Don't repeat it again.

MR. PARKS: Okay.

VICE CHAIRPERSON REID: We've got it. We've got it.

MR. PARKS: Okay.

VICE CHAIRPERSON REID: But I just -- I'm just saying I'm trying to understand -- let you understand --

MR. PARKS: Right.

VICE CHAIRPERSON REID: -- what we're here for and what we can or cannot do. That's something beyond what we have authority to do.

MR. PARKS: Okay, and just to comment just briefly on your concern is that I've listened like for four hours to all of the key elements and the key argument points of the -- of the representative of the Carr America Company, and I heard a lot of reference to aesthetics. I heard a lot of reference to the conflict between recreation versus the arts and retain. I'm very much in favor of the arts and retail.

I am a supporter of this project, but there are certain concerns and considerations that I think need to be

addressed when variances or privileges are granted, if you even see a variance as a privilege or a caveat or whatever the case might be.

VICE CHAIRPERSON REID: Well, I understand that. That's the whole point I made.

MR. PARKS: Right.

VICE CHAIRPERSON REID: Asked you within the auspices --

MR. PARKS: Right.

VICE CHAIRPERSON REID: -- of what we are allowed to do, and again, we will listen to what the applicant has to say and hopefully, given your concerns, there can be some dialogue --

MR. PARKS: Right.

VICE CHAIRPERSON REID: -- or some type of meeting of the minds.

Nonetheless, it is beyond our purview. This is not the forum for what you're trying to accomplish.

MR. PARKS: Right, and I'm really not --

VICE CHAIRPERSON REID: And it may be there are other forums that --

MR. PARKS: Right.

VICE CHAIRPERSON REID: -- it would be best accomplished.

MR. PARKS: And I'm not really --

VICE CHAIRPERSON REID: We don't have the -- we don't have the authority.

MR. PARKS: I'm not really trying to actually make it -- use it as a forum for purposes other than what it was meant. So much as to say that I view this as a part of an integrated process, be it historical preservation, be it planning, be it zoning. My approach to urban planning and urban development and business development is integrated. That's just my training and my background.

I used to have an arts gallery window at the Lansburgh building before it was transformed. I've sat in a lot of planning sessions wherein development has been discussed and oft comments wherein green space have been seen as an answer to all questions, even though there's a conflict between highrise new development on one side of the street and devastation on the other side of the street.

If anybody has been to Atlantic City, you can see Trump Towers on one side of the street and devastation on the other side of the street. So my comments are informed by those experiences and those observations, and I certainly don't want to speak outside of the jurisdiction of the Zoning Board so much as to see it as an integrated process.

VICE CHAIRPERSON REID: Well, see, we're not the zoning -- we're the Board of Zoning Adjustment.

MR. PARKS: Zoning Adjustment, right.

VICE CHAIRPERSON REID: We're not the Office of Planning or the Zoning Commission which actually promulgates text amendments --

MR. PARKS: Right.

VICE CHAIRPERSON REID: -- to the zoning regulations. Perhaps -- perhaps maybe something for you to --

MR. PARKS: I know.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

MEMBER RENSHAW: I would like to in summary really encourage Mr. Robinson Parks to take his feelings to the ANC-2C and express them and have them recorded as part of their official deliberations perhaps, and also suggest that you visit with the D.C. Arts and Humanities Commission, which may be involved in this kind of streetscape social integration aspect of working downtown.

MR. PARKS: Correct, yeah.

MEMBER RENSHAW: So we hope you do that.

MR. PARKS: And I plan on doing that, and part of my efforts is to -- is to -- is to have dialogue with the Carr America Company to let them know that there are these concerns and that it is an integrated process and that they maybe want to be a little bit more sensitive to that.

CHAIRPERSON SOCKWELL: And if anything with regard to the two elements, the mosaic and the sculpture, you

might wish to discuss with Carr America how they could help to preserve those elements or portions of those elements, or you might want to find out who actually produced if you don't know the sculpture in particular and make sure that they're aware that that will be coming down, and they may want to work with Carr over some relocation or some preservation of that --

MR. PARKS: Exactly.

CHAIRPERSON SOCKWELL: -- so that it returns to the original artist and can be put someplace else.

So there are opportunities there, and I appreciate you coming before the Board. I think we all do, and I'm sure the applicant has a renewed understanding of the impact of change on that portion of the downtown neighborhood and that, in fact, it is a neighborhood and should be cherished and regarded.

MR. PARKS: Okay.

CHAIRPERSON SOCKWELL: And we certainly appreciate, again, your coming before us.

MR. PARKS: Okay.

VICE CHAIRPERSON REID: Thank you.

You have one letter of --

CHAIRPERSON SOCKWELL: Yeah, I think Mr. Carr wanted to respond. I could just --

VICE CHAIRPERSON REID: He can respond -- Mr. Carr has to respond at the point of closing remarks.

CHAIRPERSON SOCKWELL: Okay.

VICE CHAIRPERSON REID: We're just about getting ready to get there, Mr. Carr.

You have one letter of support that you might want to make for the record. Then we go to closing remarks.

CHAIRPERSON SOCKWELL: All right. We do have a letter from the downtown cluster of congregations which expressed support for the project and a long history of supporting housing, and believes that this particular relief will allow for a much better and well designed, functional residential development on the site, and it is signed by Terry Lynch, the Executive Director, and is dated March 12th of 2001.

If there are no other persons coming forth, then we can request closing remarks by the applicant, and that is your opportunity, Mr. Carr.

MR. CARR: Well, let me be brief in light of the length of our discussion with you, but I certainly hope the presentation by us and the professionals in marketing and design give you a good sense of both the complexity of this undertaking, but also its quality.

We're very excited about that, and we do think it will be a great contributor to the vitality of this neighborhood and the city at large as it participates in that city life.

I understand Mr. Robinson Parks' thoughts and

comments, and we embrace them. I mean, we feel that we are building parts of neighborhoods. We co-exist as part of this neighborhood, and we look forward to that long association.

I think he has just contacted our company a couple of days ago and initiated that dialogue. We're certainly happy to try to accommodate a scheduled vacation on the existing premises by the artists that are there today. That has to be coordinated with our pre-construction activities and some environmental investigation. So we need to work together to sort that through.

We certainly would be happy to donate to a local artist association those two art works that are in the middle building that was deemed non-contributing historically. So prior to our demolition if someone wanted to remove those, we'd be very supportive of that idea.

And certainly we didn't address the architectural articulation of the first floor in our discussion today since that doesn't really raise an issue before you, but we plan to make a tremendous investment in the streetscape and the recreation of the early 1900s storefront of the Murray Building and the two buildings on E Street.

So we feel it's going to be a marvelous recreation of the historic character of that neighborhood, and we're offering rents that we perceive to be largely in the neighborhood of a 40 percent discount to market for the art

space. So we feel that's a very dramatic gesture to the arts community to say we want to see successful galleries thrive in Seventh Street, and we want to do our part to make that happen and are willing to take less than market rents to help see that to a successful fruition.

So we are very supportive of all that Mr. Robinson Parks said, and certainly we can cover some of the subjects in direct dialogue.

CHAIRPERSON SOCKWELL: Mr. Carr, would you be amenable to assisting in the removal of the sculpture and the mosaic should there be a decided interest in having those by someone, such as an arts organization, as you expressed?

MR. CARR: Of course.

CHAIRPERSON SOCKWELL: Thank you.

Questions, comments by the Board? Discussion?

All right. Now -- please.

MR. GLASGOW: Mr. Chairman, just briefly with respect to closing remarks, we do believe that we've met all of the requirements for the relief requested here today through the expert testimony of the witnesses, and I believe as I understand the testimony of the Office of Planning with respect to what Mr. Carr has put on the record today as to how the space, the below grade space will be treated, that we reached an accord with the Office of Planning with respect to the residential recreation space.

And so there is now -- if you will, there's no opposition to the application, and there is agreement that the condition would be to combine lot development, and that we would have 708 square feet of residential recreation space, and then that is the agreement of all concerned to the application with respect to the Office of Planning and the testimony of the witnesses and the applicant.

And I believe that we have addressed the other issues that have been raised by Mr. Robinson Parks, and we would like to proceed forward.

This project has been going on for a substantial period of time. I know I've been working on it for approximately 15 years. I know Bob has been working on it --

MR. CARR: A lot longer than that.

MR. GLASGOW: -- a little longer than that. We were both young men when that started.

(Laughter.)

MR. GLASGOW: We are now not. So we would like to proceed forward and get this -- this is, as has been discussed, is really a revision in the overall context of this redevelopment of this very important square in the city.

We are now getting down to the details of how to execute and get it done, and that's where we are with this residential building. We think that there have been significant improvements to the viability of that residential

building by virtue of what is being requested here today, and we are looking forward to a near term construction start, and therefore, we would like to get this approval as expeditiously as possible and move forward with this important project.

CHAIRPERSON SOCKWELL: Thank you.

Board members, for my own personal impression of the project, I believe that it certainly has a great deal of merit and is both needed from the housing standpoint, the living downtown concept that has been on our lips for many years, the reutilization of existing structures as opposed to their demolition.

I am supportive, I believe, from what I have seen and heard of the principal elements of the applicant's request.

I think that 708 square feet of residential recreation space as provided would certainly be either minimally sufficient or overly generous depending upon how one or the other of us looks at it, but would be acceptable to me, and that the one issue that I am still not satisfied with is the tower.

And it might be that I would be more satisfied with allowing the tower as the element exists if it were not illuminated versus allowing the tower as an element at the level of the adjacent connected penthouse structure, which it is part of, if it were eliminated.

I am concerned that that illumination may have -- and although the Carr Company has, I believe, control of much

more of the property, it may have impacts on the enjoyment of what may be built at the Hecht Company building to the north.

VICE CHAIRPERSON REID: Excuse me. Mr. --

CHAIRPERSON SOCKWELL: But that's not a factor as much as the fact that I have feelings about the element itself.

VICE CHAIRPERSON REID: Are you making a motion?

CHAIRPERSON SOCKWELL: So my motion is that we approve the application with the tower at its desired height, at the applicant's desired height, provided the tower is not eliminated.

VICE CHAIRPERSON REID: Is there no second?

MEMBER HINTON: Before I would second, I would like to hear from Ms. Sansone. If the tower is an architectural embellishment over which we have no jurisdiction, can we actually have anything to say about it?

MS. SANSONE: Yes, Ms. Hinton. Before I answer your question, it may be easier to break this application down and deal with each of the requested elements. So deal with the special exception for the setback first or last, however you choose to organize it, but the recreation space is a variance request, and it needs to meet the variance standard, and then the closed court is also a variance request. So it would need to meet the variance standard.

It may be easier for the Board to just deal with these separately. The special exception relief for the

setback, the Board has considerable latitude in conditioning special exceptions so that they're in harmony with the general purpose and intent of the zoning regulations and also to avoid any adverse impacts on the use of neighboring properties.

So to the extent any conditions are appropriate, it really should be directed towards mitigating any of those adverse impacts.

Also, the Section 411 of the zoning regulation sets out criteria that the Board should consider in dealing with the roof structure, and that would relate to whether the light and air of adjacent buildings are not being adversely affected and so on.

So those are the relevant conditions, and any conditions on either the variance or special exceptions should be directed towards mitigating those types of adverse impacts.

VICE CHAIRPERSON REID: Go ahead.

CHAIRPERSON SOCKWELL: Well, if we want to proceed by -- I mean, we can break it out into individual components and get back to the tower itself as the final component.

VICE CHAIRPERSON REID: Well, in breaking in, Ms. Sansone, I have a question about that because the application is to be taken in its entirety. I mean, are you saying that we could break it down and approve one part of the application and not the other?

MS. SANSONE: Yes, Madame Vice Chair, because they're asking for the variance. I mean, the application asks for all of the relief, but they're really separate issues for the most part. So if it's easier, if it's more efficient, they could be broken down and voted on separately.

VICE CHAIRPERSON REID: Okay.

CHAIRPERSON SOCKWELL: Why don't we deal with the court area requirements first?

And I move that we approve the court variance from the requirements.

MEMBER HINTON: I second.

CHAIRPERSON SOCKWELL: And I believe that the applicant has met his burden of proof.

All in favor.

(Chorus of ayes.)

CHAIRPERSON SOCKWELL: In consistency with the recreation space requirements, I move that we accept the 708 square foot recreation space in the basement without a requirement that at the end of a six month period, that the --

VICE CHAIRPERSON REID: You mean without the OP condition?

CHAIRPERSON SOCKWELL: Yeah, without the OP condition that it be allowed to exist independently and not collective.

VICE CHAIRPERSON REID: Second.

CHAIRPERSON SOCKWELL: All in favor?

(Chorus of ayes.)

VICE CHAIRPERSON REID: Opposed?

(Chorus of nays.)

CHAIRPERSON SOCKWELL: Two opposed, two for. The motion fails.

MR. HART: Mr. Chair.

CHAIRPERSON SOCKWELL: Yes.

MR. HART: Mr. Parsons left at approximately 12:30.

CHAIRPERSON SOCKWELL: Yes.

MR. HART: And he asked me to record that he was in favor of the entire project, but I would assume when it's broken down or in toto, his proxy is to approve.

MEMBER HINTON: Mr. Chairman, I'm a little concerned because Mr. Parsons did miss a substantial portion of this hearing, and I don't believe he would be entitled to cast a proxy vote --

CHAIRPERSON SOCKWELL: He would not --

MEMBER HINTON: -- without having read the record.

CHAIRPERSON SOCKWELL: He would not have the benefit of the record. That's true, and he would not have had the benefit of full testimony. So I believe that he was not here for the Office of Planning report, even though he did read

it.

VICE CHAIRPERSON REID: He wasn't read the record.

CHAIRPERSON SOCKWELL: But if it is --

MEMBER HINTON: If I could maybe --

CHAIRPERSON SOCKWELL: If it is Corp. Counsel's belief that we would not be correct in accepting his proxy, then Corp. Counsel is our barometer, and I would have to rely upon Corp. Counsel for that.

MS. SANSONE: Mr. Chairman, the Board's rules require that for an absentee vote, a member has to have been present for the entire hearing or has been able to read the entire record, and which would include the transcript in the file.

Now, that is also a requirement under the Administrative Procedures Act, as well. So I don't believe we can allow.

CHAIRPERSON SOCKWELL: So the motion has failed.

VICE CHAIRPERSON REID: Okay. Now, with regard to that same motion -- is it?

MEMBER HINTON: Yeah, I was just going to say my preference regarding the residential space is I think the applicant has actually met the burden that none should be required because of a very small number of units, which is 33, and the inability to use any portion of the roof.

I think that the space that's left over in the basement is really substandard and would hardly be used as recreation and can be put to a much better use, and since I feel they met the burden, I think that this 700 square feet isn't needed, and I would be willing to grant a variance from the entire provision.

CHAIRPERSON SOCKWELL: My feeling -- okay.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

MEMBER RENSHAW: I disagree with that, and I would like to make sure that there is recreation space set aside in this project mainly because we are going to have perhaps those who do not want or cannot afford to spend money in a downtown health club and would prefer to have some exercise equipment in a relatively small space provided in the basement, a protected space, a secure space so that there is security and privacy is not compromised.

But I would hate to see that in a condo. development where the units are relatively small, that there be some common area where people can go to exercise in the building itself and not have to go back outside to do so.

VICE CHAIRPERSON REID: Is there another motion?

MR. GLASGOW: Ms. Hinton, if I could just on behalf of the applicant, we have agreed that we would provide the 708 square feet.

CHAIRPERSON SOCKWELL: I believe -- yeah.

MEMBER HINTON: Okay. Could we call that vote again?

VICE CHAIRPERSON REID: Right.

CHAIRPERSON SOCKWELL: All right. The motion is return to the --

VICE CHAIRPERSON REID: The motion was without.

CHAIRPERSON SOCKWELL: Was without -- was without additional -- oh, which one? Oh, your motion?

MEMBER HINTON: No. I think you --

CHAIRPERSON SOCKWELL: My motion which failed, which I can --

VICE CHAIRPERSON REID: Do you want to amend it?

CHAIRPERSON SOCKWELL: I guess we have to deal with the other motion because you moved --

VICE CHAIRPERSON REID: No, she didn't.

CHAIRPERSON SOCKWELL: Oh, she didn't. Okay. My motion was that we approve the 708 square feet of recreation space without the condition that the Office of Planning had suggested. And that motion failed upon first offering.

I offer it again. Do I get a second?

MEMBER RENSHAW: Second.

CHAIRPERSON SOCKWELL: All in favor?

(Chorus of ayes.)

CHAIRPERSON SOCKWELL: Opposed.

(Chorus of nays.)

CHAIRPERSON SOCKWELL: Okay. The motion passes, three to one. Record the vote, please, staff.

MS. BAILEY: The motion was made by Mr. Sockwell. I'm not quite sure who seconded it.

VICE CHAIRPERSON REID: I did.

MR. HART: Ms. Reid.

MS. BAILEY: Seconded by Ms. Reid. Ms. Anne Renshaw is opposed to the motion.

MEMBER HINTON: And Ms. Hinton voting in favor.

MS. BAILEY: Ms. Hinton voting for it, Mr. Parsons not present, not voting.

CHAIRPERSON SOCKWELL: Thank you.

All right. Now, the next item, I guess, would be the enclosure provisions.

MEMBER RENSHAW: The setback.

CHAIRPERSON SOCKWELL: The setback. Okay.

VICE CHAIRPERSON REID: The setback.

CHAIRPERSON SOCKWELL: That's right. The setback.

VICE CHAIRPERSON REID: The special exception.

CHAIRPERSON SOCKWELL: Yeah, the setback of the walls of the roof structure not being in compliance with the required one to one, and I move that we approve the special exception for the setback of the roof structures.

MEMBER HINTON: I second.

VICE CHAIRPERSON REID: I second it.

Does that include the tower issue?

CHAIRPERSON SOCKWELL: No. That just includes the question --

VICE CHAIRPERSON REID: Okay. Well, what about the tower issue?

CHAIRPERSON SOCKWELL: Well, the tower issue comes with the -- what is it? It would be equal wall heights provision --

VICE CHAIRPERSON REID: Okay.

CHAIRPERSON SOCKWELL: -- perhaps with regard to that.

VICE CHAIRPERSON REID: All right.

CHAIRPERSON SOCKWELL: All right. So for the setback, all in favor?

(Chorus of ayes.)

CHAIRPERSON SOCKWELL: Okay. Now, we have to deal with the equal wall heights which determines whether or not the tower structure, which is contiguous with the penthouse roof structure, can have an unequal wall height creating, in fact, the tower appearance of that portion.

And normally under the ordinance an embellishment has to be completely separated from the adjacent structures and cannot --

MEMBER HINTON: Mr. Chairman, at the very beginning of the hearing, the applicant indicated that the proposal no longer needed special exception relief from the equal wall height provision.

VICE CHAIRPERSON REID: I thought we just --

MEMBER HINTON: Right. So it wasn't addressed at all.

MEMBER RENSHAW: It was crossed out.

MEMBER HINTON: Yeah.

CHAIRPERSON SOCKWELL: Okay. So that -- okay. That's 411.5.

VICE CHAIRPERSON REID: So that's why I was asking.

MEMBER HINTON: But it's a good question.

CHAIRPERSON SOCKWELL: Well, let me look at one time.

VICE CHAIRPERSON REID: Are we even voting on the tower? So that -- that's a moot point then, isn't it?

CHAIRPERSON SOCKWELL: See, the issue of the tower, I think, revolves primarily around the fact that it is contiguous with the roof structure and not separated.

VICE CHAIRPERSON REID: Okay, but, Mr. Chair, if we have already voted on the three relief, the variances, and the special exception that are before us, then we don't have anything else to vote on, do we?

MEMBER HINTON: Well, I think that's what we need to make sure.

CHAIRPERSON SOCKWELL: Yeah, we need to be sure that --

MEMBER HINTON: Is whether the tower is part of the roof structure or it is not, and I don't know of any requirement that says an architectural embellishment cannot be adjacent to the mechanical roof structure.

CHAIRPERSON SOCKWELL: It can be adjacent.

MEMBER HINTON: Which I think is what we have.

CHAIRPERSON SOCKWELL: But it is, in fact, all one structure from the standpoint of its being connected. It's just that there are differences. One, the void, as it may be characterized, does not have a floor at levels above the roof level, but it has a roof on it.

MEMBER HINTON: Right, but isn't there going to be a wall between the tower element and the mechanical penthouse element?

CHAIRPERSON SOCKWELL: There will be --

MEMBER HINTON: They seem to me to be separate structures.

CHAIRPERSON SOCKWELL: But they aren't separate structures the way separate structures are typically interpreted by the ordinance.

MEMBER HINTON: Well, separate structures in that

one of them is an architectural embellishment that will not be occupied, and the other is a mechanical penthouse that has mechanical whatever they are. There's some real professional language where (pause) --

CHAIRPERSON SOCKWELL: Well, we'll have to go to the development section.

MEMBER HINTON: Yeah.

VICE CHAIRPERSON REID: Can we --

MEMBER HINTON: Which is why, I guess, I was having trouble originally because when I look at the tower as an architectural embellishment, there is no requirement for it to be set back from anything. So that's why it was really important for me to understand where the setback variances were, and I think that they are located where the mechanical penthouse is, but not where the tower is because the tower does not need to be set back.

VICE CHAIRPERSON REID: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes, we can let Mr. Sher -
- Mr. Sher seems to have a very serious look on his face, which means he's got both guns out.

MR. SHER: I was just trying to -- I did it before. I just want to try it again. This is the tower. The tower sits over the elevator lobby. Behind the tower to the north and adjacent to the tower to the west is the elevator override mechanical penthouse, which extends on to the main

roof of the Murray Building.

So as we got that drawing that's marked in pink that shows where the setback issues are, this is the architectural embellishment. There is nothing below the top of this until you get to the roof of the building at the 110 foot level.

CHAIRPERSON SOCKWELL: Right.

MR. SHER: It's unoccupied. It's uninhabitable. There's no equipment. There's no elevator override. It's just as has been described. It's a void. It's empty. Again, behind it to the north, adjacent to it to the west are pieces of the mechanical penthouse.

This, and again, "this" is hard to understand in the transcript; immediately behind the tower to the north is where the elevator shafts are below that, going all the way down to the bottom. So that is where the elevator override equipment is.

The rest of this is -- actually, this is not covered at this point. This is just a screen wall taking this over to here. So it is at this level which is 15 feet, eight inches above the 110 foot roof. That's the penthouse. This is the tower.

The tower I do not believe is before the Board for any relief that is required. It's not part of the penthouse.

CHAIRPERSON SOCKWELL: See, the issue is that as it has been interpreted in many previous circumstances where I've dealt with towers and rooftop embellishments, the zoning has always interpreted it as being separated from the penthouse, not contiguous with the penthouse in structure, flashings, the whole nine yards, and can't have anything going on in it or under it.

But that's been the way I have seen it interpreted, and for the sake of this, I am willing to look at it. I mean, it's a very unique condition in this particular situation, and it is, in fact, an overly generous roof on a portion of the top story elevator lobby.

It is --

MR. SHER: Again, I want to make it very clear that there is a roof over the top story elevator lobby --

CHAIRPERSON SOCKWELL: Right.

MR. SHER: -- that doesn't exceed the maximum permitted height of 110 feet. That occurs at this -- this is the 110 foot level. There's a roof here.

CHAIRPERSON SOCKWELL: But it's waterproofed at the top of the architectural embellishment.

VICE CHAIRPERSON REID: But if we have established that this is not -- we don't need to belabor this any longer, I think that, Mr. Chair, perhaps -- and I guess this could be already handled within the usual regulatory

procedures -- that the lighting as appropriate so that it would not have any type of negative impact or in any way cause any type of nuisance to any of the neighboring buildings or something like that. I mean, not as a condition, but just as a recommendation, which I assume would already be taken care of within the, you know, normal regulatory procedures.

CHAIRPERSON SOCKWELL: I mean, generally speaking, it's only going to have -- it's going to be a conversation piece, if anything, and I don't think that the illumination itself is going to have an impact on very much, but if the Board is willing to accept what it is for what it has been described to be, then I'm not going to argue the point any further.

VICE CHAIRPERSON REID: Thank you.

MS. SANSONE: Mr. Chairman, does the Board wish to condition the order of approval on the recording of the covenant --

CHAIRPERSON SOCKWELL: Absolutely.

MS. SANSONE: -- prior to the issuance of the building permit?

CHAIRPERSON SOCKWELL: Absolutely. So for the rooftop thing, we've covered it. I think we'll accept the vote on the --

MEMBER RENSHAW: Do we have to vote over on --

CHAIRPERSON SOCKWELL: No. I think we'll just

take the vote on the setback provisions as being equivalent to a vote on the other and let that go.

VICE CHAIRPERSON REID: Okay.

CHAIRPERSON SOCKWELL: And let them go.

MS. BAILEY: Mr. Sockwell, Mr. Sockwell.

CHAIRPERSON SOCKWELL: Yes.

MS. BAILEY: It's very important that the renderings that are up on the easel -- we don't have a copy of those in the file, nor do we have a copy of the model. So it's very important that those documents --

CHAIRPERSON SOCKWELL: Well, we'll just keep all of that stuff and send them home empty handed.

(Laughter.)

MS. BAILEY: And also, Mr. Murphey, would you please give us a copy of that drawing that Mr. Sher referred to as the drawing in pink? Would you please make sure we get that?

CHAIRPERSON SOCKWELL: And we need a corrected drawing so that the project is not referred to as a ten-story building.

MEMBER RENSHAW: And we have a resume, that Mr. Mayhood was going to provide his resume.

CHAIRPERSON SOCKWELL: Okay. Is that everything?

You gentlemen know that you'll receive your --

you wanted a bench decision, I guess, in this, and that means you'll get your order in a couple of weeks.

And if there's nothing else and you know what you need, then you can go and thank you.

MEMBER RENSHAW: Good luck.

VICE CHAIRPERSON REID: Mr. Parks, Mr. Robinson Parks.

MR. ROBINSON PARKS: Yes.

VICE CHAIRPERSON REID: If you want to consult with staff, perhaps they can give you more direction on, you know, addressing some of the issues that you raised here today.

Thank you very much.

CHAIRPERSON SOCKWELL: Thank you.

On that basis this hearing is concluded.

(Whereupon, at 1:55 p.m., the meeting was recessed for lunch, to reconvene at 3:00 p.m., the same day.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(3:06 p.m.)

CHAIRPERSON SOCKWELL: The hearing will please come to order.

Good afternoon, ladies and gentlemen. This is the March 13th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Robert Sockwell, Chairperson. Joining me today on my right is Sheila Cross Reid, Vice Chair, and representing the Zoning Commission is John Parsons.

To my left, representing the National Capital Planning Commission is Susan Hinton, and to her left Anne Renshaw.

Copies of today's hearing agenda are available to you. They are located to my left near the door.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exceptions and variances is, one, statement and witnesses of the applicant; two, government reports, including the Office of Planning, Department of Public Works, et al.; three, report of the Advisory Neighborhood Commission, the ANC; four, parties or

persons in support; five, parties or persons in opposition; and six, closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of each case, except for any materials specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

The Sunshine Act requires that the public hearing on each case be held in the open before the public. The Board may, consistent with its rules of procedure and the Sunshine Act, enter executive session during or after the public hearing on a case for purposes of reviewing the record or deliberating on the case.

The decision of the Board in these contested case must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons not engage the members of the Board in conversation.

Please turn off all beepers and cells phones or set them to vibrate at this time so not to disrupt these proceedings.

The Board will make every effort to conclude the public hearing as hear as possible to 6:00 p.m. If the afternoon cases are not completed at 6:00 p.m., the Board will

assess whether it can complete the pending case or cases remaining on the agenda.

At this time, the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with a case today or if you believe that the Board should not proceed, now is the time to raise such a matter.

Does the staff have any preliminary matters?

MS. BAILEY: Mr. Chairman, yes, one quick one. There was a case initially advertised for this afternoon, FW Equipment Corporation, Application No. 16682. That case has been rescheduled to May 8th, 2000 (sic). So I just needed for the record to reflect that that case has been rescheduled.

But that is the only preliminary matter as far as other cases is concerned. All of the other preliminary matters deal with the upcoming case before you.

CHAIRPERSON SOCKWELL: Thank you.

Then will you please announce the first case or the only case of the afternoon, I should say?

MS. BAILEY: Application No. 16676 of Washington Hebrew Congregation, pursuant to 11 DCMR 3104.1, under

Subsection 353.1, for a special exception to allow the construction of 13 new townhouses with 26 off-street parking spaces in an R-5-A district, at premises 1300 block of Missouri Avenue, N.W., Square 2792, Lot 802.

All those wishing to testify, would you please stand? All those wishing to testify this afternoon, please stand. Raise your right hand, please.

(Whereupon, the witnesses were duly sworn.)

MS. BAILEY: Thank you.

Mr. Chairman, there are many preliminary matters concerning this particular place, but the applicant is seated at the table. So we'll start there.

The affidavit of posting was filed yesterday, and so a waiver needs to be accepted for that to come into the record.

And then secondly, the applicant's statement was also filed late. So those two things need to be waived in, and as I stated, the applicant perhaps would want to address those.

MR. PATRICK BROWN: Mr. Chairman, Patrick Brown from Greenstein DeLorme & Luchs.

Members of the Board, on both matters, as to the affidavit of posting, I'm not quite sure why my office didn't file that prior to yesterday. It does, in fact, reflect the fact that the property was posted in a timely manner and has been maintained. It's simply a matter of delay in actually

getting it into your records.

So I'd ask a waiver on that account. Again, no substantive problem with respect to notice being provided.

The second issue is the statement of the applicant, what I referred to as the prehearing statement. That was filed on, I believe, the 6th, last Tuesday. I was not retained until the close of business, after the close of business on the 28th of February.

So in order to familiarize myself with the case enough to file that, it took a few days, including over the weekend, and it was filed as soon as possible.

My apologies. Obviously, if I had been involved it would have been filed in a timely manner.

That document was hand delivered to the Advisory Neighborhood Commission, as well as to the Office of Planning on the day it was filed. I would have done that normally, but it was particularly important so that they had access to that document immediately upon its being filed.

So, again, I would ask the Board to waive with my apologies the 14-day filing deadline for the statement of the applicant.

And one final matter. I think I can expedite matters. The immediately adjacent neighbors, here represented by counsel requesting party status, I have no objection to that and would proceed having recognized the neighbor as a party in

this proceeding, hopefully in the interest of saving time in these proceedings.

CHAIRPERSON SOCKWELL: Thank you, Mr. Brown.

So we have it confirmed that the property was properly posted. Just the affidavit was filed late.

MR. PATRICK BROWN: That's correct.

CHAIRPERSON SOCKWELL: And the applicant's statement was filed on the 6th; is that correct?

MR. PATRICK BROWN: That's correct.

CHAIRPERSON SOCKWELL: And was received by the Advisory Neighborhood Commission at the same juncture.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

MEMBER RENSHAW: I'd like to state at this time two things. One, I have a map here, just a D.C. land map just so everyone knows that it's here so I can pinpoint the area even better. If there are any objections, I'll put it away.

And the other thing is that Missouri Avenue going past this location is my regular route into town, and it has -- I'm a long time resident of the District and live on Military Road. Military goes into Missouri, and I have traveled it thousands of times and just want you to know that I am very familiar with the area.

CHAIRPERSON SOCKWELL: Thank you, Ms. Renshaw.

I don't think anybody would object to the map,

and we appreciate your statement of the knowledge of the area.

I believe that if the Board members do not have a particular objection, that the preliminary affidavit of posting will take them individually. I could recommend that we accept that filing because it's merely when we got it and doesn't have any consequential effect on the case or the posting.

MEMBER HINTON: I agree.

CHAIRPERSON SOCKWELL: Thank you.

With regard to the applicant's statement, it was received by the Advisory Neighborhood Commission at the same time that we received it. Does anyone on the Board have an issue with accepting that?

MEMBER HINTON: I personally don't have an issue, but I would like to give the adjacent homeowner who has requested party status an opportunity to comment because that's very short time for a party to have to review information that's in from the hearing today.

CHAIRPERSON SOCKWELL: Is the adjacent -- if you would, please, before you speak, you must come forward and seat yourself by a microphone. You have been sworn in, I presume. And press the button on the front of the microphone which will illuminate the red.

Yes.

MR. DAVID BROWN: Mr. Chairman, my name is David Brown of the law firm of Knopf & Brown here in Washington, D.C.

I did not stand to be sworn in because I don't expect to be a witness, just a legal representative for my clients today.

With regard to the late filing of the materials, I was retained in this matter on March 8th, and I came down to file a request for party status on March 9th. At that time, I had an opportunity to examine and take notes from the application. And insofar as that is an issue, I have no problem with the applicants, the late filing

CHAIRPERSON SOCKWELL: All right. Thank you.

So as representative, you had access to it immediately upon becoming the representative. So it did not prejudice.

MR. DAVID BROWN: That's correct.

CHAIRPERSON SOCKWELL: Thank you.

All right. Then if there are no objections, I would request that we waive the rules to allow the prehearing statement to enter the record as of the 6th of March.

Mr. Brown, you can return to your seat at this point. Thank you very much.

MS. BAILEY: Well, actually, Mr. Sockwell, I don't mean to interrupt, but the next request would deal with party status, and I think Mr. Brown --

CHAIRPERSON SOCKWELL: Okay. Then we'll do that. I apologize.

Thank you.

MS. BAILEY: And Mr. Brown's request for party status for his clients, that request was filed late, and a waiver would be needed to accept his request into the record after you've made a determination whether he should be granted or they should be granted party status.

CHAIRPERSON SOCKWELL: I would recommend that we waive the rules to accept his application for party status as he was not brought into the case until the 8th of March. Does anyone object?

Okay. Thank you.

Then with your request for party status, Mr. Brown, would you please explain the reasons why you would feel that representing your client, your client is particular impacted by the proposed project to the extent that party status should be granted? And that would include location of -
-

MR. DAVID BROWN: Yes, Mr. Chairman.

If you examine the site plan for the proposed development, you will see that there is on sort of the southeast corner of that lot something called the existing building. That is my client's home, has been their home for many years, and they are obviously the neighbors most directly and immediately and adversely affected by this proposal, more so than the general community at large in certain respects,

although the general community has concerns about the impact of this proposal. They have even more direct and immediate concerns that they would like to bring to the attention of the Board.

CHAIRPERSON SOCKWELL: Well --

MR. PATRICK BROWN: Mr. Chairman, as I stated earlier, I have no objection to Mr. Brown's client's party status. So hopefully I can make the process easier.

CHAIRPERSON SOCKWELL: Yeah, we need to clarify exactly where this property is, and I apologize, Mr. Brown.

VICE CHAIRPERSON REID: Do you know the lot and square?

MR. DAVID BROWN: That's it.

VICE CHAIRPERSON REID: Oh. Oh, okay. Where it says "existing building" here on the plan. Okay.

MR. PATRICK BROWN: The Office of Planning has provided an aerial photograph.

CHAIRPERSON SOCKWELL: All right. That's fine. I'm with you. All right. Thank you.

And, Mr. David Brown --

MR. DAVID BROWN: Yes, sir.

CHAIRPERSON SOCKWELL: -- your client's name is?

MR. DAVID BROWN: Carol Lightfoot Walker. She is one of the owners of the property.

CHAIRPERSON SOCKWELL: All right. Well, it's --

VICE CHAIRPERSON REID: Wait a minute. Let me understand this. One of the owners of the property wants party status.

MEMBER HINTON: Owner of the adjacent property.

VICE CHAIRPERSON REID: The what?

MEMBER HINTON: The owner of the adjacent property, not the applicant's property.

CHAIRPERSON SOCKWELL: Yeah.

VICE CHAIRPERSON REID: What? What are you saying?

CHAIRPERSON SOCKWELL: She was saying that the owner of the adjacent property wants party status.

VICE CHAIRPERSON REID: No, that's what I thought, but I thought that he said that the owner of the adjacent property was related to the land owner, the applicant. Is that what you said?

MR. DAVID BROWN: No, no, no. Carol Lightfoot Walker is one of the owners of the adjacent property. The other two owners of the adjacent property --

VICE CHAIRPERSON REID: I've got you.

MR. DAVID BROWN: -- are not here today.

VICE CHAIRPERSON REID: I've got you.

CHAIRPERSON SOCKWELL: Okay. We're clear. Thank you.

Well, it's obviously that aspects of this

development would have an impact on the adjacent property since the development is entered from a roadway that would be built directly adjacent to the side of that house, and that the development, in fact, wraps around two sides of the property owned by your client.

I can see no reason why we would not wish to grant party status since there appears to be a potential for a considerable impact.

Any problem?

MEMBER HINTON: Agree.

MEMBER RENSHAW: Agree.

CHAIRPERSON SOCKWELL: All right. Then, I move that we grant party status to Ms. Lightfoot Walker, and who is represented by Mr. David Brown.

MEMBER HINTON: I second.

CHAIRPERSON SOCKWELL: All in favor?

(Chorus of ayes.)

CHAIRPERSON SOCKWELL: Let staff record the vote.

MS. BAILEY: The Board has voted five to zero to approve the party status for Carol Lightfoot Walker, motion made by Mr. Sockwell, seconded by Ms. Susan Morgan Hinton, Ms. Renshaw, Ms. Reid, and Mr. John Parsons to agree.

CHAIRPERSON SOCKWELL: All right. Then you have party status for your client, sir, and we can proceed with the case if there are no other preliminary matters.

MR. DAVID BROWN: Does this mean I stay here?

CHAIRPERSON SOCKWELL: No, not at this time. You will have an opportunity to testify and to cross examine.

MS. BAILEY: There are a few, Mr. Sockwell, but you may want to take them up at the time. The ANC report was submitted late, and also the DPW report, but I'm not sure if you want to do that now or --

CHAIRPERSON SOCKWELL: Well, I think it's pretty simple just to go ahead and get that out of the way.

MS. BAILEY: Good enough.

MR. DAVID BROWN: And if the Board members don't object, then we will accept the DPW and Office of Planning reports.

MS. BAILEY: That's the ANC and DPW.

CHAIRPERSON SOCKWELL: I mean ANC and DPW reports having been filed late, we waive the rules for that. Okay?

MEMBER HINTON: Great. That's fine.

MEMBER RENSHAW: Fine.

CHAIRPERSON SOCKWELL: Thank you. Done.

Mr. Brown, Mr. Patrick Brown, you may proceed.

Thank you.

MR. PATRICK BROWN: Thank you, Mr. Chairman.

Patrick Brown again from Greenstein DeLorme & Luchs.

I'm here this afternoon as counsel for Stevens

Park, LLC, which is the contract purchaser and authorized by the current property owner, the Washington Hebrew Congregation, to file and prosecute this application. It involves the construction of 13 townhouses and three separate groups on the property. It has 26 off-street parking spaces, which is twice the level, minimum required under the zoning regulations.

With me, before I briefly kind of set the tone of the case this morning or this afternoon, to my right is Mr. Martin Poretsky, who is the Operations Manager and a long time home builder in this area, Martin Poretsky.

To my left is Mr. Gary Garczynski, who I believe is currently the vice president of the National Association of Home builders, slated to become the president of that organization, who's also involved in this project.

Mr. David Hall, which is a real estate consultant for PIC, which is a not-for-profit housing group. He was here at one and will be back shortly. He had a conflict.

Mr. Ken West, our project engineer from West Consulting, unfortunately has been delayed, but is en route. Fortunately his materials are here and available, and Mr. Meyers, the project architect, has been similarly delayed as a result of our pushing back the time and will be here as soon as possible.

But we certainly have the ability to go forward with the information and the people, particularly Mr. Poretsky,

who has been involved in this from the inception.

Keeping this matter in the proper focus, this is a special exception case. It's not a variance case, and by virtue of it being a special exception case, the presumption is that if the project meets the criteria set forth in the zoning regulations and it's in keeping with the zoning map and zoning regulations and no substantial adverse impact on the area, that the application would be approved as a matter of course.

The regulations in Section 410 lay out a series of very specific requirements, and my prehearing statement goes through them one by one, outlining the requirement and the response. In each case, as you'll see as we go through the project, the requirements established have been met.

You'll find also that you have the support of the Office of Planning. You have the support, and I think Mr. Cochran is to be applauded with the depth of his involvement in this project, acting as a go-between between various agencies, helping to incorporate changes that were requested by the Park Service, and also helping to resolve issues involving DPW.

The end result is -- and I won't speak for the Park Service because their representative is here today -- but the public agencies, whether federal or district, have been actively involved in this project. OP is in support. Department of Public Works, with one condition that the applicant readily accepts, is in support. So I think you have

a fair amount of federal and state involvement in this project, which I think Mr. Poretsky can tell you how the project has changed and improved over time.

With that, I'd like to allow Mr. Poretsky to introduce himself and then introduce the project, which I think in the course will take you through the various elements laid out in Section 410, and then obviously be available for questions.

MR. PORETSKY: Thank you, Patrick.

For the record, my name is Martin Poretsky. I'm a member of a family that has been involved in real estate in Washington, D.C. specifically for three generations.

I'm a graduate of Yale University, having majored in architecture, and I attended graduated school there both as well for architecture and urban planning.

For the past 30 years, I've been involved in home building in the greater Washington area, having personally built through my own companies over 3,000 homes.

I'm past president of the Metropolitan Washington or the Maryland National Capital Building Industry Association; serve as a life director of the Northern Virginia Building Association; currently senior life director and executive member of the National Association of Homebuilders; and some years ago actually I was president of the Metropolitan Washington Builders Council.

Having retired about a year and a half ago from active building in the suburbs, Gary Garczynski and I formed a partnership called Urban dimensions. Its specific mission is to provide affordable housing for sale within the District of Columbia.

We're working in partnership with other nonprofits and to maximize the best of our public and private expertise.

I also serve on Fannie Mae's advisory board for the District of Columbia Partnership Office, and their involvement informally is with this project as well. This proposal before you today is exactly the type that our efforts are trying to create within D.C. proper.

Lastly, as I'm sure you know, NAHB, HUD, and Fannie Mae are working towards the goal of providing a million new homes over this current decade with cities across the country, and this property and project is part of that initiative.

We have been working on this project since last summer through various technical staffs and agencies. We did attempt throughout the summer and the fall to contact the homeowners of the neighboring house to work with them in integration of their home in our proposal, but all calls and letters went unanswered until shortly before the ANC meeting last February, this past February.

We would still greatly entertain improving their access, as well as assisting the refurbishment of the exterior of their beautiful home and other actions which may be mutually acceptable between ourselves and any other neighborhoods as well.

As Pat mentioned, David Hall is supposed to have been here. He was here earlier today. David is involved with us as a member of Stevens Park, LLC, representing the People's Involvement Corps (phonetic).

I appreciate your consideration for the plan we're presenting you this afternoon. Frankly, I didn't do any work politically because really we thought this was really pro forma in working through the technical aspects of the project and the various agencies.

Gary, do you want to introduce yourself, as well?

MR. GARCZYNSKI: Yes. My name is Gary Garczynski. I'm the president of National Capital Land Company and a partner with Martin, as he mentioned, in Urban Dimensions.

Speaking from my perspective as a national officer of the National Association of Homebuilders, we have this commitment to revitalize America's cities and first tier suburbs, and as an officer, I felt compelled that it was a responsibility to not only talk about revitalization, but be actively involved in it, and that's why I readily joined with

Mr. Poretsky to form our company, Urban Dimensions.

This is hopefully our initial project in the District. We hope to do many more. This is not a one time shot. We believe it's a neighborhood that is conducive to what we would deem affordable housing as opposed to going into a Georgetown for a gentrification or somewhere in the northwest.

We thought that this was a good jumping off point for us, the right size, the right location to meet our initial goal.

We know that infill is not automatic, and compatibility with the neighborhood is important, and we certainly want to leave that door open as we discuss this case with you and with our neighbors. We are certainly willing to listen to their concerns, address their concerns, and I would reiterate until we had the ANC meeting, we did not realize -- and maybe this is somewhat our fault -- the temperature of the neighborhood per se in how they perceived this piece of open space now being converted into productive, for sale housing.

This is not unusual. We're prepared to deal with that, and hopefully you and we and the neighbors will all keep an open mind towards the goal of making this something that we all can be proud of.

MR. PATRICK BROWN: I'd like to let Mr. Poretsky take you through the conceptual site plan, the elevations, the unit plans, as well as we have blown up there an excerpt from the base map, which shows the surrounding neighborhood.

Ken West is here. So we'll --

MR. PORETSKY: Can you all see this better, okay?

As Ms. Renshaw knows, this is the property.

MS. BAILEY: Sir, you need to speak on the mic, and secondly, whatever information you're presenting to the Board, we'll need to keep a copy of that.

MR. PATRICK BROWN: That is in the prehearing statement as an exhibit. We've just provided a blown up, colored version of it. Is that sufficient?

CHAIRPERSON SOCKWELL: That's Tab A.

MR. PORETSKY: This is the property here. The location there is the house. You see these are all multi-family apartment buildings in the immediate surrounding area there, with the exception of the Fort Stevens Park and its ribbon that comes down here to Missouri Avenue and then continues across.

And Mr. Murphy from the Park is here for that purpose, and this is the general case, and these are all apartment buildings here. These are quadplexes here, apartment buildings here, and our proposed project here.

And again, from planning school where you were going from apartments down to open space and traditionally townhouse development is a transitional zone down in that respect.

Any questions?

CHAIRPERSON SOCKWELL: No, please continue.

MR. PORETSKY: Also, I think the Office of Planning's aerial photograph really is also particularly helpful in pinpointing the project.

As Mr. Brown indicated, we have met for the past several weeks with Mr. Murphy and Agent Coleman, the Superintendent of Rock Creek Park. Our initial plan had 13 units in the same location. However, all units fronted this driveway coming into the property.

The concern was raised, which was also reiterated partially at the ANC hearing, concern of the Military Rhodes School (phonetic), was really a better sense of the park land and in meeting with Office of Planning, thinking about from the European cities, London, in particular, opening and fronting onto parks.

We reversed our plans on these two buildings so that the front units of them actually front on the park with a walkway here connecting from the parking areas around to them.

Then to make sure that the back of the units were not just really all backs, especially with this house consideration here, we've created a courtyard entrance in the rear so that it can double as both some seating and recreational space, but very nice ambiance coming through a gated entry here to come into the lower level of the unit as well.

We have also proffered to landscape of the minimum ten foot high Lehland cypress this corner area here, this area through here, as well as a low hedge for the parking here between ourselves and the Park Department of the U.S. federal park, and we have also agreed to put a four foot wrought iron fence from this brick monument here around the property in this fashion as well.

And as counsel had mentioned, we have 26 parking places for the 13 townhouse units.

Again, we have screening of ten foot Lehland cypress trees or equal along this part here to protect both the existing house and our property to provide separation here, which is continued down in this fashion as well there.

MEMBER RENSHAW: Could you explain the protection that you propose between your inroad street and the existing building?

MR. PORETSKY: Unfortunately the property -- and you can see that their grandfather or themselves conveyed to the previous owner of this property -- is outlined here, and we have surveyed the property twice and checked with the D.C. Surveyor's Office. This is accurate. So that part of their existing small driveway and this pathway here is presently encroaching on the existing property they had sold to the previous buyer or previous owner.

It was developed, and then gave the property to

the Hebrew Congregation, and at this point, we have an 18 foot roadway. We would have liked to have 20. We still could, but we put 18 foot in here to provide some minimum relief.

We come in off the street. It would improve that roadway, and actually have offered in the past to limit these trees and actually create a rear entrance this way onto the property, although if they so desire, not to speak for them, they can put their own access or driveway in on their own frontage, as well, here or whatever.

MEMBER RENSHAW: But what you're saying is that there is no screening from --

MR. PORETSKY: There is no screening. We have offered to. We have not worked with them --

MEMBER RENSHAW: -- immediately to the side.

MR. PORETSKY: We have offered to do that on their property, both to do that as well as paint the property, but that's not been responded to.

We'd be very happy to work -- we still have in our final planning to do a full landscape plan for ourselves internally, and externally we'd be very happy and would work to integrating the two together.

CHAIRPERSON SOCKWELL: So is it my understanding that the front entrance to this adjacent property actually appears to open to your drive?

MR. PORETSKY: No. The front entrance is on

Missouri Avenue.

CHAIRPERSON SOCKWELL: Okay. What is the entrance that seems to intersect your driveway and sidewalk?

MR. PORETSKY: I believe that is just either a lower set of stairs or roof stairs. There's a rear porch that's over here that accesses their property to the rear.

CHAIRPERSON SOCKWELL: Right. I see that.

MR. PORETSKY: And this, I believe, is just an area way, a lower area, but they can address that at the right time.

CHAIRPERSON SOCKWELL: All right, but you are --

MR. PORETSKY: And what I looked at -- what we looked at last night, I mean, we can very easily build the steps for them to come off the side and turn to go down as well. so that's not an obstacle.

CHAIRPERSON SOCKWELL: But you are the developer.

MR. PORETSKY: Yes, I'm the -- we're the contract person for the developer of this site.

CHAIRPERSON SOCKWELL: And you're not really familiar with what's adjacent to your own driveway?

MR. PORETSKY: I believe I am, but I have not been inside that house to tell you where the stairs go.

CHAIRPERSON SOCKWELL: No, but --

MR. PORETSKY: They go down to a --

CHAIRPERSON SOCKWELL: -- you were speaking as if

you believe it's a stair. Maybe it goes down. I mean, I assume that you've been on that site a number of times.

MR. PORETSKY: I have, but I've not trespassed onto their home.

CHAIRPERSON SOCKWELL: I understand that, but obviously you should be able to see what's going on. This is somewhat disappointing.

MR. PATRICK BROWN: Perhaps Mr. West can --

CHAIRPERSON SOCKWELL: Yeah, perhaps someone else on your team knows more about the property.

MR. PORETSKY: Okay.

MR. WEST: For the record, my name is Ken West. I'm an engineer and a surveyor registered in the District of Columbia, and I'm representing Mr. Poretsky.

If I may, may I distribute some exhibits?

CHAIRPERSON SOCKWELL: Through staff, please. Thank you.

MS. BAILEY: Mr. West, were you sworn in, sir?

MR. WEST: No.

CHAIRPERSON SOCKWELL: Did you submit your witness cards?

VICE CHAIRPERSON REID: Can you do that later, Ms. Bailey? Just get sworn in.

(Whereupon, the witness was duly sworn.)

MS. BAILEY: Thank you.

MR. WEST: May I submit these?

What I have is copies from the D.C. Surveyor's Office, which showed the existing structure relative to the property line. That survey was in August of 1940. It shows where the structure is relative to the final property boundaries.

In answer to the Chairman's question, there is a set of steps that is adjacent to the west property boundary. Those steps go from grade level to the basement of the existing house.

CHAIRPERSON SOCKWELL: Okay.

MR. WEST: And this is shown on the drawings as steps that are crossing over the property boundary. They're shown here that they were located by survey.

Thank you.

They were located by survey. So they're accurately represented. Those steps had gone in, I would suppose, after the 1940 survey. They're not indicated on that survey.

CHAIRPERSON SOCKWELL: Thank you.

MR. WEST: If I may, I would like to address some other issues that we've considered in this project. One is access to other property, to emergency vehicles.

What I'd also like to do is give to the Board some exhibits showing the compatibility of the driveway and

access road to emergency vehicles.

CHAIRPERSON SOCKWELL: Have these exhibits been given to the opposition and/or to the Advisory Neighborhood Commission as well?

MR. WEST: No, these exhibits are in response to a comment from the Advisory Neighborhood Commission, a committee in reference to accessibility of emergency vehicles. So we're responding --

CHAIRPERSON SOCKWELL: But those would want to be placed in the hands of the ANC since it was their question.

MS. BAILEY: Mr. Sockwell, the opposition has a copy. We just need to get the ANC a copy.

CHAIRPERSON SOCKWELL: Yeah, okay.

MR. PATRICK BROWN: To clarify, Mr. Sockwell, the ANC met on the 6th of March, and those issues were raised and put forward at that point. So we're trying to respond to those issues that were raise, and that was after the prehearing statement had been filed.

So we're trying to respond as best we can to the issues that are emerging.

CHAIRPERSON SOCKWELL: Those will have to be -- you have copies for the ANC?

Is the ANC representative here? Will the ANC have --

MR. PATRICK BROWN: I believe the Chairman is

here. We'll provide copies. Yeah, we can certainly provide copies to them.

CHAIRPERSON SOCKWELL: All right. Continue.

MR. WEST: I can make a statement that the accessibility of emergency vehicles has been addressed with the site. The site provides the adequate turning radiuses for a typical ambulance service. The width of the access drives do meet the Department of Public Works' standard widths.

And I'll be available to address any other questions or concerns that you have as far as accessibility.

CHAIRPERSON SOCKWELL: And that would include fire truck access?

MR. WEST: That would include fire truck access. We did not do a turning radius on a hook and ladder. We did not do that because normally hook and ladders aren't used for this size of structure.

CHAIRPERSON SOCKWELL: True.

MR. WEST: Parking is provided to meet the standards of the aisle widths and the parking stalls do meet the D.C. standards.

Additionally Missouri Avenue provides a lane of parking on each side. Missouri Avenue is three lane westbound, three lanes eastbound, with an eight foot painted median, and the northernmost lane is marked for parking.

This provides guest parking if needed, both on

Missouri Avenue and there is off-street parking on Rock Creek Ford. It's not labeled as parking, but the neighborhood does use Rock Creek Ford Drive as off-street parking.

CHAIRPERSON SOCKWELL: Mr. West, do you recall how Missouri Avenue was signed in parking restriction ways?

MR. WEST: It is signed. I believe the south side is signed as far as parking during certain hours. In other words, the lanes of traffic are --

CHAIRPERSON SOCKWELL: Missouri Avenue is a rush hour street.

MR. WEST: It is a rush hour street, and I do recall what the south side is. I'm sorry I cannot provide the information to it. I do not recall what the signage is, but there is signage for parking on the north side.

CHAIRPERSON SOCKWELL: All right.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

MEMBER RENSHAW: In regard to Mr. West's statement about the fact that he did not do a turning radius for a hook and ladder because that apparatus would be too big for this kind of a project, I just want to point out that in the District apparatus may be called to other sites. So you have to make arrangements for that type and that size of apparatus just in case that's the only apparatus available to come to the site.

MR. WEST: Yes, that's true, and it is accessible or can be made accessible by the drive aisle. The access aisle connects Missouri Avenue to the parking on the north side. It is possible to provide a mountable curb on the north side of the parking to where there is possibility of a straight drive-through from Missouri to Rock Ford Drive. There is not enough of a significant grade separation to provide a barrier to a vehicle, such as an emergency vehicle, if it did need to do a direct drive-through.

CHAIRPERSON SOCKWELL: As I recall, I believe there's a 24-foot turning radius. There are actually a variety of turning radii.

MR. WEST: Twenty-five foot, four inches, yes.

CHAIRPERSON SOCKWELL: Depending upon which vehicle we're talking about and the width of the drive aisle required, and things like that.

And it is recommended certainly by the fire department that straight through access be provided for emergency vehicles where the turning radii and potential problems make it difficult to maneuver, and those things would have to be addressed effectively in your plan, I'm sure.

MR. WEST: Yes. If the Board pleases, may I submit some diagrams that we had prepared to address the question of the turning radius accessibility?

CHAIRPERSON SOCKWELL: Go ahead.

MR. WEST: The exhibits show the standard turning radius for and emergency vehicle, such as an ambulance or fire truck that meets the minimum requirements.

The highlighted or yellow area indicates a turning path.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

MEMBER RENSHAW: We are just looking at the street and trying to figure out where is the middle of the road on this diagram.

MR. WEST: Yes. The middle of the road is indicated by the dashed lines.

MEMBER RENSHAW: So right in here?

MR. WEST: Yes. That's labeled as a -- there should be a label on there as "painted median."

MEMBER RENSHAW: Painted median.

MR. WEST: And that would be the middle of the road.

CHAIRPERSON SOCKWELL: So the assumption is that you've shown the lane designations by your heavy dashed lines.

MR. WEST: Yes.

MEMBER RENSHAW: All right. Well, we point out also that apparatus could come from the other direction. It's not just coming from Georgia Avenue.

CHAIRPERSON SOCKWELL: Well, what's been shown,

the vehicle that's shown is something smaller than --

MEMBER RENSHAW: Would be going west.

CHAIRPERSON SOCKWELL: -- is something 19 feet long or appears to be 19.

MR. WEST: Such as an ambulance or a --

MEMBER RENSHAW: Medic unit.

MR. WEST: -- standard emergency vehicle.

CHAIRPERSON SOCKWELL: Right, which in this case used the standard turning radius drawings that we all use, and yet the emergency vehicle does not carry the same profile, as you know. It has a wider box on the back of a cab. It's really a straight body type chassis cab.

MR. WEST: Yes.

CHAIRPERSON SOCKWELL: Sort of like a high top van.

MR. WEST: Yes.

CHAIRPERSON SOCKWELL: That sort of thing. So this is great for turning in, and the assumption that we have to make is that a vehicle can U turn out, and there are no curb -- there are no diagrams that deal with backing movements because they can't be --

MR. WEST: Well, if they're --

CHAIRPERSON SOCKWELL: -- shown effectively.

MR. WEST: I'm sorry.

CHAIRPERSON SOCKWELL: but anyway, I see what you

provide.

MR. WEST: Yes, we would look at the backing movements also.

CHAIRPERSON SOCKWELL: Yeah, but those have to be generated either by a computer program or by hand because they're not -- you don't buy those templates.

But anyway, I think the question is if there's adequate access for vehicles, emergency vehicles, and others to get into and out of the site, then the issues of the rest of the description of the property I think we can go to.

MR. WEST: If you have any other questions as far as --

MEMBER RENSHAW: Just whether or not this has been reviewed by our fire department.

MR. WEST: I'm sorry?

MEMBER RENSHAW: Have your diagrams been approved by the fire department?

MR. WEST: No, the diagrams have not been approved by the fire department. Normally that is reviewed during the permit process.

We have submitted plans to the Department of Traffic Services, and we have also submitted plans to the Permit Section for work in public space. The Permit Section work in public space distributes copies to different agencies, including the Fire Department in reference to a driveway

permit. We have not had a response back from the fire department as to our submittal.

We have had a response from Traffic Services in that the driveway configuration widths and dimensions that we're showing are acceptable.

MR. PATRICK BROWN: If I could add.

CHAIRPERSON SOCKWELL: Yes.

MR. PATRICK BROWN: Ms. Renshaw, and it just came into the file yesterday, there is a report from Ken Laden over at Department of Public Works.

CHAIRPERSON SOCKWELL: Now, these units that you have shown have, I guess -- some of them face to the east or they all face to the east. So we have rear yards facing the spine road that comes into this on the one side, and we have front yards facing the road with the developments that are on the west side.

MR. WEST: Yes.

MR. PORETSKY: I believe it's the other way around, Mr. Sockwell.

CHAIRPERSON SOCKWELL: Beg your pardon?

MR. PORETSKY: The west is here and north is here.

CHAIRPERSON SOCKWELL: Okay. That's right. I'm sorry. Sorry about that. I keep getting the north mixed up with regard to this, as well.

I know Missouri Avenue quite well, but I think of it -- turn the drawing upside down to realize exactly what I'm looking at.

Okay. You might as well continue to discuss the project.

MR. PORETSKY: Okay. As you were pointing out, Missouri Avenue is to the south, Rock Creek Ford Drive to the north. So the park is to the west, and as we were saying, these two buildings here would actually face the park. This unit here will face across the park in that direction.

And, again, to accommodate that desire, then we have redesigned these rears to have an entrance in that fashion as well.

What's not quite shown yet when we're going through the plans, they're not modified. This will be changed and reflected in the lower levels as well, but this is what would face the park, and actually at a suggestion from conversations with the parks, looking to incorporate even an optional balcony off of the living room/dining room area, sort of in a very European style that could then fit within this area here and be able to overlook the park as well.

The main units through -- the three-story townhouse coming in from the front door, there's a vestibule, and then coming inside and go up the stairs to your main level, the living room/dining room up front, the kitchen, family room

and breakfast room cross the rear of the home.

Coming up to the main level, the upper level, you have the opportunity to either dual master bedroom suites or two bedrooms and two bathrooms, or this can be a master bedroom, and this can be a bedroom and a computer room/study/niche alternatively.

The lower level has a few options. This is an integral townhouse. Again, what we haven't shown here either is I have to redesign something to show that for somebody who's buying the entire unit and wants to have perhaps a parlor and a family room downstairs, front entrance here, and then coming around to go up the stairs, it has two different ways to approach the inside of the house.

What we've shown here as an option, and I want to stress strictly that this is an option to one of the 13 home buyers, that can either have this as a lower level for an elderly parent or in-law or just one main room or, depending on their income status and affordability need, they could create - by adding an extra kitchen, they could actually create a separate apartment down here. They could help supplement their mortgage payments.

But we're building 13 units and selling 13 individual townhouses, but this is the very -- those are the flexibility and issues that the homeowner can make his determination on.

Do you have a question?

CHAIRPERSON SOCKWELL: Yes, I do. I have looked at these plans as units that actually appear to be two unit buildings as opposed to single family homes with an option. The drawings that we've been supplied here at the Board show the independent living spaces, independent kitchens, a foyer that is more normal to a two-unit walk-up building than to a single family home because both units would be entered from that foyer.

Of course, you'd have your fire separations and all the usual requirements for a two unit home, and you made a statement that sounded like there was an option to the individual purchaser to purchase the whole thing or perhaps only a portion of it.

MR. PORETSKY: No, we're selling the whole thing. We are selling 13 -- we were selling to one individual the entire unit. At their option we can finish off this kitchen and bathroom, or it can be there anyway if that's for their mother-in-law or whatever, but we are selling 13 townhouses.

CHAIRPERSON SOCKWELL: Yeah, the plan that you have proposed troubles me because it does not have the traditional home look or feel. The home is the upper floors, and the lower floor appears to be designed with one thing and one thing only in mind, and that is that it be an independent unit accessed by its own separate door inside of a foyer, which

is a more public foyer than a house entry.

And I don't understand that this is 13 single family units. I see it as 26 dwelling units based on the definition of the ordinance, and a few other things, with the intention of being occupied that way, and there are 26 parking spaces, one for each of the 26 dwelling units.

If this is an option, the ground floor is an option, then it has not been proffered to us that way.

MR. PORETSKY: Mr. Meyers is not here. It's easier for us to show what I felt -- and we've been delivering our planning to accommodate that option so that's being the ultimate case so that there would be enough spaces, parking spaces and so forth to accommodate it in either fashion.

But we are selling the 26 -- the 13 townhouses, and if someone wants it this way, then they can have it that way and rent it out or they can -- it's easier to -- we have shown the optimum design. It's easier to show a more open space or whatever, and we've chosen to really show what we think would be the full optimum use should everybody take that and should everybody, you know, decide they wanted to run a unit out, and then we'd try to accommodate for that.

CHAIRPERSON SOCKWELL: Well, the difference between the impact of 26 families on a neighborhood and the impact of 13 families on a neighborhood in real terms is very significant because each family unit, which is one or more

persons related to living with the proper required bathrooms and bedrooms and kitchens, that's a family unit by definition of the ordinance, and your townhomes appear to be designed specifically as two family units.

I mean, there is independent mechanical. There is independent everything. I mean the arrangements of things look like they work for independent units, and I just don't understand. I mean even the decks that you show tend to make the idea of two independent units more apparent than the idea of single family homes.

I am concerned because if we are to review this as what your option would allow it to be, then we have to review it as a 26-unit development, not a 13-unit development.

I mean, that's the optimum. You said it yourself. The optimum means that if most people would want to have a rental unit below, which would certainly help with affordability and whatnot, that's what is going to impact the neighborhood, not 13 single family homes that, like any other single family home, might or might not be adaptable to a second unit.

MR. PORETSKY: Well, certainly I appreciate your comments, and from a marketing standpoint I have to take that into consideration. I did not perhaps convey the property in another -- which shows the option.

The motivation for this rental potential unit comes from two sources. One, and which David Hall from PIC were here, the fact that they have been recently working on a project on Rittenhouse Street and had been overwhelmed with some demand; they felt that there was some demand and a need to have more apartments' availability in the neighborhood for new construction.

It also comes from our working with Fannie Mae and others and trying to create a mechanism that can provide an affordability factor. This is not a new concept.

Gary and I have acquaintances in Long Island and New Jersey, other places, that this is what they've done to make it possible for Ms. Smith to have this unit, as you know.

CHAIRPERSON SOCKWELL: Well --

MR. PORETSKY: But I also wanted to just say from my limited understanding of what we're addressing as zoning, I felt we should show what is the optimum case because I can't tell you whether one, five, ten or all or none would take the option, but wanted to be able to account for that.

And so you can review it either way. I certainly understand the question, and it's open to your thoughts really.

VICE CHAIRPERSON REID: Yeah, but the fact of the matter is what we're dealing with here today, sir, is what was advertised was 13 townhomes, and what we have to make our decision on is what we see before us.

What you're showing before us actually 26 units, which is different. What we need to see is not what is some nebulous option, but what we need to see is exactly what you intend to do.

Other than that we can't -- you know, we can't make a decision on something that we can't see or we can make a decision on what we see, and what we see depicted in your in your drawings are 26 units.

CHAIRPERSON SOCKWELL: This is different from a townhome that might have a fourth floor because of changes to the attic structure. It's really, really a difference between one type of unit and another type of unit, and the way they're designed to me makes them look very much -- well, let me ask you a question, and perhaps this will answer some of mine.

How are these to be sold? Are these to be fee simple purchase?

MR. PORETSKY: As a condominium, we'd like a fee simple purchase, but the individual purchaser is buying. There were 13 out sales.

CHAIRPERSON SOCKWELL: Okay.

MR. PORETSKY: Thirteen units.

CHAIRPERSON SOCKWELL: Okay, all right. So this is very similar to the condominium that I live in, which is Capital Park IV in Southwest, which has units that are three-story townhouses. It's condominium. There are units that are

individually three stories up. There are units that are two stories up and one separate unit down, but they are entered by separate entrances, not a combined foyer.

Now, I understand the concept of this type of townhouse very well, and I believe that what I am looking at is fundamentally different from what you have presented with your proposal to us, that this fundamentally is a unit designed to be two floors up, one down, with separate services, separate unit rental on the lower floor.

And they also appear to me even if they're condominiums -- this kind of unit looks more like an investor unit than a live-in unit because it doesn't -- it doesn't have the amenities that the typical live-in unit would have for a private home buyer.

Most private home buyers don't like walking into a shared lobby as if living in an apartment, and I'm maybe surmising, but I am saying to you that this is a very different look from what I think a single family home that's designed to be a single family home should have.

Your option looks very much like a two-unit, three-story walk-up.

MR. PORETSKY: With all due respect, I really -- and Gary can testify. Gary has done several projects in other jurisdictions that combine these two, but the --

CHAIRPERSON SOCKWELL: Yeah, but we're here.

MR. PORETSKY: -- intent -- well, the intent was to have the single door to be treated as a single unit, and what happens behind that is -- I mean if you're not the owner of this unit, you're not going to have this door here. It's going to be open stairwell. You're going to have a family room, probably another bedroom here, and you're coming back upstairs to the other levels.

My understanding also, we only had to provide 13 parking places. We provided 26. We've done everything we can.

I don't think -- I could be wrong, but to me if only half of the people took this unit, that would be one thing.

I have no idea whether even it would sell at all, and if we need to proffer it out, that would make things more palatable. We can do that, too. Just really it's a concept that we were trying to work with on the affordability side.

CHAIRPERSON SOCKWELL: Well, let's say that part of your population --

MR. PORETSKY: I apologize for any confusion.

CHAIRPERSON SOCKWELL: Well, I understand. Let's say that an individual wants to buy and doesn't want the unit downstairs. Then he's forced to start his living at the second floor and up, and then come downstairs to what is not a floor with a garage and other services. It's a basement on the first floor which would be the typical floor to which he would access his ground level amenity, which is yard, patio, things like

that.

These units aren't designed that way. You have pushed the principal living area to the second floor and are telling us that the ground floor is the optional other unit, and I don't see that as making any sense.

MR. PORETSKY: Okay, and I buy that because I had checked with the focus group, about a half a dozen people that were early buyers or potential buyers and give them the offer.

I asked them whether they would like to have a garage here or the flexibility of having the lower living space, and each one to a tee too this.

So we backed off because the projects we've done elsewhere have had garages as the normal lower level, and you all know the neighborhood, and certainly the neighborhood is here, a lot more than I have, and if we need to make that adjustment, we're flexible with that.

We're just again going back to the affordability issue. This is something that the Homebuilders Association and Fannie and HUD have looked at as a means of helping get people into homes that could afford a larger home and have the rental unit. But that's the driving force behind it.

If it doesn't work within a zoning context, this property can certainly stand on its own as 13 individual townhouses.

VICE CHAIRPERSON REID: Well, the fact of the

matter is -- and here is the problem that you're facing -- in that neighborhood, the only way that you can get affordable housing given the prices of those properties there is with that rental unit to offset the mortgage payment.

So if you eliminate those units as rental units, then they're no longer affordable.

MR. PORETSKY: I agree with that, and that's a very good point because we're already talking about a mid-\$200,000 townhouse because it's going to cost us within \$10,000 the same amount of money, to either 240 or 250, to be able to build, and you're exactly right.

VICE CHAIRPERSON REID: So that's what the problem is.

MR. PORETSKY: Either to build the 13-unit or to have that flexibility to --

VICE CHAIRPERSON REID: But you see, that's where the problem is. You're ostensibly dumping -- and I hate to use the word, but you're putting double intensity in that one little neighborhood and trying to achieve the concept of the affordable housing.

And look. Believe me, I commend you in intending to do that because there is a dire need for affordable housing in the District. We all know that, but now, your problem is how can you balance getting the affordable housing in that particular community without unduly impacting that neighborhood

with such intensity.

MR. GARCZYNSKI: Madame Vice Chairman, I would ask -- submit a question to you. Are you talking about possibly through the proffer a blend of X number that could only be used as a convert?

I think we've been remiss in not showing the different options. I've built grade level townhouses all my life, and normally you have an option of, as we stated, a garage or the lower level being used for a guide room and a family room, which still -- living room, kitchen, dining upstairs.

VICE CHAIRPERSON REID: Well, that's the thing. We don't know. This is the thing. We must listen now to the complete case, which includes listening to the ANC and the community and seeing what they say, as well as the fact that you are represented by a very competent counsel. He's been here many times. He knows what, in fact, the procedures are here, and as such, I would think that -- I don't think that he hears me -- as such, I would think that he would have made sure that whatever you brought to present here was in keeping with what was actually what you plan to build and having the best choice of getting here; is that not correct, Mr. Brown?

MR. GARCZYNSKI: Well, I do believe we should have shown all of the available options so it did not leave the impression, as the Chair so noted --

VICE CHAIRPERSON REID: That was a serious mistake.

MR. GARCZYNSKI: -- that it looked like 26 units because it was intended to just sell 13 units with the option of creating your own living space down on the lower level, creating a mother-in-law suite on the lower level, or the possibility of renting. All of the above were possibilities, and --

MEMBER RENSHAW: It might be possible to sell that lower level.

MR. GARCZYNSKI: No.

MEMBER RENSHAW: Why not? Why not?

MR. GARCZYNSKI: This is a condominium with -- and it would be --

VICE CHAIRPERSON REID: A piggyback.

MR. GARCZYNSKI: -- 13 units.

MEMBER RENSHAW: What would prevent -- what would prevent a homeowner from selling that unit?

CHAIRPERSON SOCKWELL: Parcelization.

VICE CHAIRPERSON REID: You'd have to subdivide it, and it couldn't be subdivided and sold separately.

MR. PATRICK BROWN: If you're in a condominium regime, you have one unit.

MEMBER RENSHAW: So it is to be sold as condo units?

CHAIRPERSON SOCKWELL: You see, the one problem -

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MR. PORETSKY: You see, the reason for condominium is for the lot layouts and the homeowner association because of the frontage and so forth.

VICE CHAIRPERSON REID: I think that -- wait a minute. I think that, Ms. Renshaw, you're getting -- condominiums have two concepts in the District. One is like a single unit, and one is like an association type of setting where it's to pay a fee, but it's not just -- that's really one unit, I guess --

MR. PORETSKY: That's exactly right.

VICE CHAIRPERSON REID: -- apartment-like setting. So it has like a dual meaning actually.

MEMBER HINTON: What would prevent all 13 owners from getting together and deciding that they're all going to subdivide and take the 13 owners, subdivide that property and become 26 owners with the one owner having -- the owner of the two-story part having two-thirds of a share and the other owner having one-third?

VICE CHAIRPERSON REID: Then it's a co-op.

CHAIRPERSON SOCKWELL: Well, it could be a condo.

MR. PATRICK BROWN: If you proceeded, it's more like a homeowners association where you've seen the ones over on Pennsylvania Avenue, S.E. You have up in Northwest Embassy

Park Drive, Sutton Place, where you have -- it's condominiums as you think of an apartment building, it's kind of two dimensional, whereas a homeowners association is more horizontally spread out.

So that you establish -- and where I live in Westover is a homeowners association of multi-level townhouses, and you establish a single unit, and the expectation and the legal is such that you can't change it because --

VICE CHAIRPERSON REID: Right.

MR. PATRICK BROWN: -- I've got 148 neighboring townhouses who are expecting the same from me and vice versa. So that's a legal documentation question.

I mean, I couldn't in my townhouse in a homeowners association decide that I'm going to make an English apartment.

CHAIRPERSON SOCKWELL: Right.

MEMBER HINTON: But your townhouse, do you have property that goes along with your townhouse?

MR. PATRICK BROWN: I have a little patio. I own 1,214 square feet of the District of Columbia.

MEMBER HINTON: And these don't seem to be subdivided with lot lines, or are they?

MR. PATRICK BROWN: I don't -- I mean at this point we haven't shown that, but you would probably -- again, if you were only selling one unit, then you'd sell a postage

stamp here, which would show the footprint of the building.

MEMBER HINTON: Well, I think that that's important to show when you're here, and let me just say this to get this out on the record, too. Part of what we have to look at are the final plans that you actually propose to build because the way that you get here is you file for a building permit. You're found to not be in compliance with zoning, and it's referred here.

So the drawings we get should be ready for a building permit. We have things labeled conceptual plans. We have landscape that's been referred to on a rendering that we're still working out the landscaping. That's required to be in this file before we have this hearing.

If you're having lot lines on here, those are required to be on the plan so that we can look at them. So I think there is a big misunderstanding about the amount of information and the point that your project needs to be at before you come here and ask for approval.

When we approve these drawings that you've shown that all have that lower unit, that's what you're required to build unless you come back. So I think we've already noted that there should at least be that option shown if you don't intend to build that on every single unit.

But you know, realize we're supposed to be reviewing pretty much final plans, and that's not what I'm

seeing.

MEMBER RENSHAW: And following up on Ms. Hinton's question about lot lines, are you selling the houses or are you selling the houses plus the property underneath?

MR. GARCZYNSKI: If this is a condominium in the true sense of the word, you are selling square footage or airspace, and the condominium is owned jointly by the condominium association. This is not fee simple where there is a set piece of ground that you are buying that has boxed dimensions on it.

Counsel, is that correct?

VICE CHAIRPERSON REID: I think that what it is is you're buying your unit fee simple, and then also included within that is a percentage of the common elements, which would then consist of all the other aspects of that property, the common areas.

So you also own a pro rata percentage of that as well. It is fee simple ownership.

MR. GARCZYNSKI: But it's not a lot. You know, you're not getting the deed.

VICE CHAIRPERSON REID: No, not per se, but you are owning the land on a pro rata basis predicated upon the percentage of the square footage of your particular unit.

MR. GARCZYNSKI: That's correct, Madame Vice Chairman.

CHAIRPERSON SOCKWELL: Yeah, yeah. First of all, there seems to be no mention of the word "condominium" in the description of your project in the prehearing statement, not one.

Second, I am the president of a 243-unit townhouse condominium in the District. So I have some idea of what you would have presented if you had done this correctly.

We saw it as townhouses. We didn't see it as condominium. We assumed it to be fee simple, and we assume it, from what you showed, to be 26 dwelling units of one sort or another.

So this is something that is causing all of us a great deal of trouble. The impacts of this we are now faced with. No matter what you've told us here, what you gave us was incomplete and, in a certain perhaps innocent way, misleading.

MR. GARCZYNSKI: Mr. Chairman, I wonder if it would be appropriate if we can ask tat this point in time because of, I think, the confusion that's been warranted by our submission, for a continuance to come back and clarify these issues for the Board rather than go on with this cloud of doubt about what the interpretations are. I think we have to come back and do a better job and be more precise.

We will be prepared to do that. I think one of the thing that we will be talking about though and a very real consideration is going to be the concept of are these going to

be 13 townhomes that will tend towards gentrification, or is the affordability aspect of housing in the district enabled by the possibility of the lower unit being a rental in some or all of the units to be considered?

I mean that's a fundamental question here, and I guess for us and for you because it seemed to be a question for the Board as well in your minds.

CHAIRPERSON SOCKWELL: Well, I think one of the things is that you've mentioned Fannie Mae and others who have been involved with this. These are organizations that have extensive development experience and an understanding of housing and the loan process, and you talk about affordability, and you are creating a kind of unit that lets people with lesser income buy into them, but along with the affordability comes the curse.

And the curse is that these are the least likely people to be able to manage the rental of a lower unit. These are people who would have to be trained in understanding what that means both from a tax standpoint to the maintenance standpoint.

As well, if the units are designed to be two units within one shell, then there are all of the fire separation requirements, et cetera that the District of Columbia would put on you, and all of those things would have to be addressed if the concept was 26 rather than 13.

And the community may have questions with regard to the intent, and whether or not they believe that this is something that will resolve in stable neighborhood growth, intense neighborhood growth, investor owned units where there's no control over who lives in them, and no stabilization at all.

There are all sorts of questions to be asked, including the one of the adjacent neighbor.

MR. GARCZYNSKI: I don't think it was ever in our vision that we would have 26 of these units, but we did perceive that there would be a number of them, and you're very right on with the empowerment process of ownership and being a landlord that would have to have been a definitive program working with Fannie in that regard.

In Alexandria we did a housing project with cooperation of the Housing Authority, and we had the whole empowerment program worked out with the Urban League, and something like that in this type of atmosphere might be conducive to generating that kind of responsibility.

VICE CHAIRPERSON REID: Also --

MR. GARCZYNSKI: So we would request that continuance, Martin.

MEMBER RENSHAW: Mr. Chairman.

VICE CHAIRPERSON REID: Excuse me.

MEMBER RENSHAW: Mr. Chairman.

VICE CHAIRPERSON REID: I was --

CHAIRPERSON SOCKWELL: Ms. Renshaw, let Ms. Reid. She had started.

VICE CHAIRPERSON REID: I was --

MEMBER RENSHAW: I didn't hear you.

VICE CHAIRPERSON REID: Sorry.

CHAIRPERSON SOCKWELL: Thank you.

VICE CHAIRPERSON REID: Another issue, a very serious issue, is your ANC because the ANC carries great weight, and they're in opposition. So I think that perhaps the whole idea of a continuance may be good to give you an opportunity of perhaps talking to them, meeting with them, working with them, and to see if there can be any meeting of the minds or if there can be any compromises or alterations or getting input as to what they see that community up there needing and trying to work -- that's -- it's always -- it's not -- it's just not in your best interest to come before us when you have that kind of opposition.

To have to continue it, then, I don't think it's insurmountable. Maybe. I don't know, but at least if there were attempts made to try to --

MR. GARCZYNSKI: Well --

VICE CHAIRPERSON REID: -- it may go a long ways.

MR. GARCZYNSKI: Madame Vice Chair, we certainly intend to do that. We would love to come back when this is up again and not only have all of the questions that the Board has

put forth answered, but also have the support or at least the cooperation of the ANC in working with them.

VICE CHAIRPERSON REID: You can try.

MR. GARCZYNSKI: That's what we will do.

VICE CHAIRPERSON REID: And you had also a civil association, too, that we received letter from that you may also want to approach and try to work out if that is at all -- if, in fact, there's any opportunity, you can explore it.

MR. PATRICK BROWN: Mr. Chairman.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes. Just a second. Ms. Renshaw had a question.

MEMBER RENSHAW: Yes, I have a question and just a statement. First, the statement.

I would like Mr. West to analyze the situation on page 2 of DPW's report where it talks about no left turns to and from the project onto Missouri, and I would just like to hear your thoughts as to how in heaven's name that's going to be enforced because that's almost -- that is unenforceable.

So if you would please direct your attention to that and bring back some thoughts.

And also, Mr. Chairman, I wanted to ask since our Park Service representative is here today whether he can return at another time or would request that he give his testimony today.

VICE CHAIRPERSON REID: His testimony might be redone predicated upon resubmission.

CHAIRPERSON SOCKWELL: Yeah.

MEMBER RENSHAW: Could we ask him officially?

MR. PATRICK BROWN: Can I have a corollary question of that, and being somewhat presumptuous and ask Mr. Parsons if, from the relationship of this property to the Park Service property, if you had anything on your mind that we could be -- specifically we could be prepared to respond to so that we don't have a back-and-forth over time.

We want to answer questions, not leave them unanswered.

COMMISSIONER PARSONS: Well, I don't know where you're going, but I mean, you could come back here with garages in the bellies of these buildings, right? I mean, you could, and abandon the whole idea and go to the Alexandria formula, changing the design of the project considerably, couldn't it?

Removing the need for parking, for instance.

So I understand you've met with the Park Service.

They're here to talk. I don't know what they really have to say, but I know I am with the Park Service, but we try to keep our distance between those who are dealing with you and myself for obvious reasons.

So I understand that they were responsible for turning these buildings towards the park or the suggestion of

doing that. You're the one who's responsible for it, and I think there's potential here.

But whether they've got any specific comments, you probably already know that from the Park Superintendent, but from my observations, nothing in particular.

CHAIRPERSON SOCKWELL: And I would request that when you -- if we bring you back, that your prehearing statement which contains a lot of ifs, a lot of "well, we could do it this way or we could do it that way," that those things be settled so that we are seeing before us specifics rather than generalities.

There are too many generalities where there should be specifics, and you got so specific where you should have been very general if this was a limited option or a potential option for 30 percent of the units or a fixed option for 25 percent of the units, et cetera.

You've got to come in with something that is, in fact, reviewable, and in this case it isn't reviewable, at least not effectively. As well, I can understand that the community would be very concerned even if they had fully understood what you proposed because what you've proposed is incomplete and doesn't give them the ability to respond to, fall in love with, or attack any aspect of it on firm round. It's very, very soft, but very, very hard where it probably should have been completely different.

So if the Board wishes to continue the case, it's their call. I always get disturbed when something doesn't have enough information or has too much going one way or something, but I'm not real happy about continuing cases these days because we've moved too many cases to another place in the schedule.

But Board members?

VICE CHAIRPERSON REID: I believe just the opposite in a sense, that what we have to contend with and make decisions on -- decisions that we make on this Board are very important decisions, and in order for us to make the decisions that are going to be in the best interest of everyone in this city, as much as possible, and we need to have adequate information.

And I think that it does not serve the interest of the public or the applicant to make decisions if we don't feel that we don't have what we need, and I think it's incumbent upon us that when a case comes before us and it is inadequate or it has some problems, point those problems out, give them the opportunity to correct it, and come back, try to work with the community, come back and perhaps be able to make their case.

MEMBER RENSHAW: I would just like to ask is there any room on behalf of the community. Is there any room for movement with the ANC, or is the community so determined

that this is not going to work, given what has been outlined?

In other words, given the location of two historic dwellings right on that block face.

CHAIRPERSON SOCKWELL: Well, I think at this point I would hope that the community would indulge the Board in the direction that it may wish to take because it will be to the benefit of the community to see the project in its proper form as opposed to its current form.

VICE CHAIRPERSON REID: As you well know, Mr. Chairman, we have seen -- we've often seen people come to us in opposition, and then after having gone through some various meetings and discussions or whatnot, compromises come back and they, you know, have gotten further --

MEMBER RENSHAW: And we've had some no hope situations, too. So --

VICE CHAIRPERSON REID: This is true.

Also, I would suggest to the applicant that the main reason why you're here is to receive the relief that you're asking for, which is a special exception, and the main test there is that you do not adversely affect neighboring properties.

That is paramount. I didn't see a traffic report or traffic analysis report, and perhaps that might be well to obtain one to give us some idea as to the impact and the analysis of the impact given the traffic, given the parking and

the circulation, traffic, the flow as to how that, too, would impact upon the community, and that would also go a long way, I'm sure with the community to demonstrate to them that you have taken those steps to try to insure that there be as -- the impact be as less as possible there, the intersection. I mean right there on Missouri and 13th Street, which is a fairly intensive -- intensely used --

MEMBER RENSHAW: It's more than fairly intensive. It is intensive.

VICE CHAIRPERSON REID: Yeah. So --

CHAIRPERSON SOCKWELL: Mr. Jones, if you wish to speak, you'll have to come forward.

MR. JONES: No, only request --

VICE CHAIRPERSON REID: You have to come forward for that.

CHAIRPERSON SOCKWELL: All right, but you still have to come forward.

VICE CHAIRPERSON REID: Identify yourself.

CHAIRPERSON SOCKWELL: To identify yourself.

MR. JONES: Good afternoon. I'm James H. Jones. I'm the Chair of ANC-4A.

And my question is this. Back to the question that Ms. Renshaw asked, I'm not sure that there's even any communications between the developer and the people who need to be a part of the negotiations.

So when we talk about being room, there needs to be some communications initiated.

And my other question is that we would need to be clear on what kind of process they're going to follow in terms of having to deal with ANCs because our schedule is just as crowded as others as well, and we need to be clear on that.

VICE CHAIRPERSON REID: Have they not met with -- I'm sorry, sir. Have they not met with -- I mean, there has been no -- are you saying there has been no -- no -- no communication whatsoever? They have not been before you?

MR. JONES: They have met with ANCs, but I'm saying with the people who are impacted, the community people who really live -- the residents. To my knowledge, there's been no -- no discussion at all with the people who own the adjoining property, with the Alumnae Association. I don't think that there has been any discussion.

VICE CHAIRPERSON REID: Well, I think that's what we were saying. That's the whole -- that was one of the things that we were advocating, that they --

MR. JONES: Well, I'm just saying that they need to initiate communications first before they can negotiated.

VICE CHAIRPERSON REID: Well, excuse me. May I please --

MR. JONES: Correct.

VICE CHAIRPERSON REID: Well, the point I was

making was that given the fact that it would be continued, that would give an opportunity to do just that, to enter into discussions, negotiations.

Obviously they would have to be the aggressor because they're the ones who wanted to get approved. I mean, I would expect the community to come to them.

In a sense, they realize that. Mr. Brown's their counsel. He understands and knows exactly what has to take place and guide them through the whole process. So that's part of it. Definitely that --

MR. JONES: Exactly.

VICE CHAIRPERSON REID: -- be accomplished.

MR. JONES: Exactly.

CHAIRPERSON SOCKWELL: Mr. Jones.

MR. JONES: Yes.

CHAIRPERSON SOCKWELL: When did your ANC first become aware of this project?

VICE CHAIRPERSON REID: Yesterday?

MR. JONES: Let's see. Probably I became aware of it in January when I became the chair.

CHAIRPERSON SOCKWELL: I see.

MR. JONES: That's when I became aware.

CHAIRPERSON SOCKWELL: But apparently the developer may feel that it was presented to the ANC at least as a concept prior to that time, but you were aware of it as of

around January?

MR. JONES: yeah, when we had our first meeting.

I think we had -- January the 3rd was when I became aware of it. That's when I was elected the chair of ANC-4, and that's when all of these cases were --

CHAIRPERSON SOCKWELL: It was an agenda item thought.

MR. JONES: Pardon?

CHAIRPERSON SOCKWELL: it became an agenda item?

MR. JONES: It became an agenda item on February the 6th, the first month up, and then we put it on again in March the 6th, as well. So we've had two full sessions where they've had opportunities to input, and they did.

MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: All right. Well, it sounds like at least there is some communication with the ANC, and --

MR. JONES: With the ANC, yes, but with the people who are most directly impacted, I'm --

CHAIRPERSON SOCKWELL: Can the ANC make its best effort to bring those people to the Advisory Neighborhood Commission meeting should there be further communication between the developer and the ANC?

MR. JONES: Well, we are doing that because we try to notify the people as soon as we hear what's going to

happen. We send out our notices, and to the extent that we can send out the notices and reach them that way, we certainly will be able to help.

MEMBER RENSHAW: Mr. Jones, would you tell us for the record when the ANC meets, please?

MR. JONES: Yes, ANC-4A meets on the first Tuesday of each month at 7:00 p.m., and we meet at the Fourth District Metropolitan Police Department Headquarters, which is at 6001 Georgia Avenue, N.W.

CHAIRPERSON SOCKWELL: All right. Thank you.

MR. JONES: Thank you.

MR. PATRICK BROWN: Members of the Board, Ms. Reid is correct that I recognize the importance of this and made contact with the adjoining property owner, and others have identified themselves through this process. So my hope is that nobody is going to be left out as we follow through.

CHAIRPERSON SOCKWELL: Sir, your question, you'll have -- is your question pertaining to the schedule for rehearing if it's continued?

MR. THOMPSON: Yes.

CHAIRPERSON SOCKWELL: We will get to that. And what, sir?

MR. THOMPSON: They're telling me accusations made about being in contact with my family.

CHAIRPERSON SOCKWELL: Okay. I think that we

will hold that because you would testify during the hearing of circumstances like that. WE're not getting any further into the facts of the case at this time.

MEMBER HINTON: Could we just suggest if there's anyone in the room who is interested in speaking with the applicant in the next month or so, please make sure you give them your name and phone number before you leave so that they'll know how to contact you.

CHAIRPERSON SOCKWELL: So, Board members, if you are amenable to this, I would like to continue this case to a date certain.

MEMBER HINTON: Good.

MEMBER RENSHAW: All right.

MR. HART: This hearing can be continued to June 12th. That's seems like a reasonable time for the --

CHAIRPERSON SOCKWELL: Is that reasonable to the --

MEMBER RENSHAW: The ANC has said no

CHAIRPERSON SOCKWELL: No?

MEMBER RENSHAW: Does the ANC have a comment on June 12th?

MR. PATRICK BROWN: I'm going to be out of town.

CHAIRPERSON SOCKWELL: All right.

MR. JONES: We're going to be out of town, too.

COMMISSIONER PARSONS: Is it a matter of being

out of town or is it a matter of that's not enough time to do this job?

MR. PATRICK BROWN: I mean, I think it's enough time to do the job, but I'm just physically going to be --

COMMISSIONER PARSONS: Okay. So you don't feel you need six months.

MR. PATRICK BROWN: No.

CHAIRPERSON SOCKWELL: No, just another date.

COMMISSIONER PARSONS: Mr. Jones, do you think it's possible to --

MR. JONES: We will accommodate the gentleman.

CHAIRPERSON SOCKWELL: Mr. Brown, if June 12th is impossible for you, what is possible?

MR. PATRICK BROWN: Prior to --

MR. HART: May I suggest June 19th?

VICE CHAIRPERSON REID: The following week?

PARTICIPANT: I'm out of town that week.

CHAIRPERSON SOCKWELL: I mean, you're an attorney. You don't get vacation.

(Laughter.)

MR. PATRICK BROWN: Do you meet weekly?

CHAIRPERSON SOCKWELL: Yes.

PARTICIPANT: Yes, the 5th of June?

CHAIRPERSON SOCKWELL: Is June 5th satisfactory, Mr. -- staff?

MR. HART: I am somewhat hesitant for June -- I'm very hesitant for June the 5th because we have a case that could take quite a bit of time. Given June the 5th is a meeting day, and the hearing will be just for half a day, I'm suggesting the 19th or the 26th.

COMMISSIONER PARSONS: The 26th I am available.

CHAIRPERSON SOCKWELL: 26th June?

MR. PATRICK BROWN: June 26th.

CHAIRPERSON SOCKWELL: Okay, done.

MR. PATRICK BROWN: Morning, afternoon?

MS. BAILEY: Mr. Sockwell, we do have a party, and the party needs to be consulted to see if that's okay with them as well.

CHAIRPERSON SOCKWELL: It's Mr. Brown, the other Mr. Brown.

MR. DAVID BROWN: I think I was scheduled to be headed for Seattle at that point, but I'm not going to let that interrupt the progress of this case. If it turns out that everyone else is ready to go forward and I can't be here, I'll make other arrangements.

CHAIRPERSON SOCKWELL: We appreciate your accommodation.

MR. HART: So it is June the 26th in the morning.

CHAIRPERSON SOCKWELL: All right. I think that you are aware of what the Board's concerns are, and I don't

think we need to go further into that, and we appreciate the time that everyone has spent in the audience waiting to become involved directly, and we apologize for having to continue this, but we think it's in the best interest of all concerned that what you respond to is what is provided.

And it may give an opportunity for communication that has heretofore not been fruitful to take place and produce some positive results, and that is what we really do hope for.

So we thank you very much and wish you a good evening.

PARTICIPANTS: Thank you, Mr. Chairman.

CHAIRPERSON SOCKWELL: If there are no more matters, this hearing is now concluded.

(Whereupon, at 4:45 p.m., the public meeting was concluded.)